

1 has a seventy-five percent (75%) disability rating resulting from exposure to  
2 coal dust and the employee shall be awarded income benefits which shall be  
3 equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average  
4 weekly wage but not to exceed seventy-five percent (75%) of the state average  
5 weekly wage as determined by KRS 342.740 multiplied by the disability  
6 rating of seventy-five percent (75%). The award shall be payable for a period  
7 not to exceed five hundred twenty (520) weeks. Income benefits awarded  
8 under this paragraph shall be payable to the employee during the disability.

9 (e) If it is determined that an employee has radiographic classification of 3/2 or  
10 3/3 occupational pneumoconiosis and respiratory impairment evidenced by  
11 spirometric test values of less than fifty-five percent (55%) of the predicted  
12 normal values, or complicated pneumoconiosis (large opacities category A, B,  
13 or C progressive massive fibrosis), there shall be an irrebuttable presumption  
14 that the employee is totally disabled resulting from exposure to coal dust, and  
15 the employee shall be awarded income benefits equal to sixty-six and two-  
16 thirds percent (66-2/3%) of the employee's average weekly wage but not more  
17 than one hundred percent (100%) of the state average weekly wage and not  
18 less than twenty percent (20%) of the average weekly wage of the state as  
19 determined by KRS 342.740. Income benefits awarded under this paragraph  
20 shall be payable to the employee during such disability.

21 (2) The presence of respiratory impairment resulting from exposure to coal dust shall  
22 be established by using the largest forced vital capacity (FVC) value or the largest  
23 forced expiratory volume in one second (FEV1) value determined from the totality  
24 of all such spirometric testing performed in compliance with accepted medical  
25 standards.

26 (3) When valid spirometric tests are not provided and a physician certifies to the  
27 administrative law judge that spirometric testing is not medically indicated because

of the permanent physical condition of the employee, the administrative law judge shall make his or her decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula  $(103.5 - 0.42X)$ , where X equals the claimant's age at the time of the arterial blood gas study.

(4) Upon request, the commissioner~~executive director~~ shall refer an employee who has been awarded retraining incentive benefits under subsection (1)(a) of this section to the Office of Vocational Rehabilitation for evaluation and assessment of the training, education, or other services necessary to prepare the employee for a trade, occupation, or profession that will return the employee to remunerative employment, or services necessary and appropriate to prepare and enable the employee to successfully complete a bona fide training or education program approved by the commissioner~~executive director~~. The commissioner~~executive director~~ shall contract with the Office of Vocational Rehabilitation to provide vocational rehabilitation or education services commensurate with the skill levels and abilities of the employee. Services provided under this subsection shall be funded by the coal workers' pneumoconiosis fund, KRS 342. 1242 notwithstanding.

(5) The commissioner~~executive director~~ shall promulgate administrative regulations sufficient to effectuate the provisions relating to retraining incentive benefits provided under subsection (1)(a) of this section. The administrative regulations shall:

(a) Define a "bona fide training or education program" to mean a postsecondary

1 education or training program, including but not limited to the postsecondary  
 2 programs registered with the Higher Education Assistance Authority, and  
 3 successful completion of which will qualify the person completing the course  
 4 for a trade, occupation, or profession, and which program can be completed  
 5 within the period benefits are payable under subsection (1)(a) of this section;

6 (b) Establish requirements for approval and certification of a bona fide training or  
 7 education program;

8 (c) Provide that funds paid to the training or education program by the employer  
 9 as required under subsection (1)(a)4. of this section shall be applied only to  
 10 instruction, tuition, material costs, and any fees necessary for the completion  
 11 of the program;

12 (d) Establish requirements for successful participation in and completion of an  
 13 approved and certified bona fide training or education program, and eligibility  
 14 standards that must be satisfied to receive sums to be paid by the employer  
 15 pursuant to subsection (1)(a)6. of this section; and

16 (e) Establish attendance, performance and progress standards, and reporting  
 17 requirements in consultation with the Kentucky Adult Education Program  
 18 within the Council on Postsecondary Education as conditions that must be  
 19 satisfied to receive retraining incentive income benefits pursuant to subsection  
 20 (1)(a)3. of this section.

21 (6) In no event shall income benefits awarded under this section be stacked or added to  
 22 income benefits awarded under KRS 342.730 to extend the period of disability and  
 23 in no event shall income or retraining incentive benefits be paid to the employee  
 24 while the employee is working in the mining industry in the severance or processing  
 25 of coal as defined in KRS 342.0011(23)(a).

26 ➔Section 1843. KRS 342.734 is amended to read as follows:

27 (1) The commissioner~~[executive director]~~ shall promulgate administrative regulations

1 pursuant to KRS Chapter 13A:

- 2 (a) Establishing the form and content of a statement for services;
- 3 (b) Specifying the manner in which the employee may designate and change the
- 4 designation of physicians;
- 5 (c) Requiring selection of gatekeeper physicians;
- 6 (d) Requiring reports from providers on the condition of the employee; and
- 7 (e) Establishing procedures by which disputes relative to the necessity,
- 8 effectiveness, frequency, and cost of medical services shall be resolved.

- 9 (2) Pending the effective date of administrative regulations promulgated by the
- 10 commissioner~~executive director~~, all administrative regulations heretofore
- 11 promulgated by the Workers' Compensation Board pertaining to these matters shall
- 12 remain in effect, it being determined that those administrative regulations are within
- 13 the statutory grant of authority, meet legislative intent, and are not in conflict with
- 14 the provisions of this chapter.

15 ➔ Section 1844. KRS 342.735 is amended to read as follows:

- 16 (1) The commissioner~~executive director~~ shall promulgate administrative regulations
- 17 to expedite the payment of temporary total disability and medical expense benefits.
- 18 (2) The commissioner~~executive director~~ may promulgate administrative regulations
- 19 incorporating managed care intended to reduce costs or to speed the delivery or
- 20 payment of medical services to employees receiving medical and related benefits
- 21 under this chapter.
- 22 (3) The commissioner~~executive director~~ shall promulgate administrative regulations
- 23 pursuant to KRS Chapter 13A establishing an expedited method for resolving
- 24 medical issues prior to the filing of a claim with the Department~~Office~~ of
- 25 Workers' Claims. The administrative regulations shall permit an employee or other
- 26 interested party, prior to the filing of a claim, to request a determination by an
- 27 administrative law judge on medical issues relating to the reasonableness or

1 appropriateness of the proposed medical care or relating to the obligation of the  
 2 employer or the employer's insurance carrier to make payment of contested medical  
 3 bills. However, the employee has the burden of proof to show the medical expenses  
 4 are related to the injury, reasonable and necessary prior to an application of benefits  
 5 being filed and before an award or order of benefits. Thereafter, the burden is upon  
 6 the employer. The respondent to the moving party shall be given ten (10) days to  
 7 answer a request for an expedited determination of medical issues, and the  
 8 administrative law judge shall issue a ruling within seven (7) days thereafter. The  
 9 interested parties shall be provided a form to provide to the medical care provider  
 10 and the completed form filed with the department~~office~~ and served upon the  
 11 respondent shall initiate the time for response and determination.

12 ➔Section 1845. KRS 342.740 is amended to read as follows:

- 13 (1) For the purposes of this chapter, the average weekly wage of the state shall be  
 14 determined by the commissioner~~executive director~~ as follows: On or before  
 15 September 1 of each year, the total wages reported by subject employers under the  
 16 Kentucky Unemployment Insurance Law for the preceding calendar year shall be  
 17 divided by the average monthly number of insured workers (determined by dividing  
 18 the total number of insured workers reported for the preceding year by twelve (12).  
 19 The average annual wage thus obtained shall be divided by 52 and the average  
 20 weekly wage thus determined rounded to the nearest cent. This average weekly  
 21 wage shall be certified to the commissioner~~executive director~~ by the Education  
 22 and Workforce Development Cabinet in a manner prescribed by the  
 23 commissioner~~executive director~~ by administrative regulation. The average weekly  
 24 wage as so determined shall be applicable for the full period during which income  
 25 or death benefits are payable, when the date of occurrence of injury or of  
 26 disablement in the case of disease, or of death, falls within the calendar year  
 27 commencing January 1 following the September 1 determination.

1 (2) Whenever a change in the average weekly wage of the state is of an amount that  
 2 increases or decreases the minimum weekly income benefits for total disability or  
 3 death by \$1 or more, or the maximum weekly income benefits for total disability or  
 4 for death by \$2 or more, computed in each case and rounded to the nearest dollar, an  
 5 adjustment in those minimums or maximums which are affected in the requisite  
 6 amount by the change in the average weekly wage of the state shall be made which  
 7 will reflect the increase or decrease, but no change in these limitations shall  
 8 otherwise be made.

9 ➔Section 1846. KRS 342.750 is amended to read as follows:

10 If the injury causes death, income benefits shall be payable in the amount and to or for the  
 11 benefit of the persons following, subject to the maximum limits specified in subsections  
 12 (3) and (4) of this section:

13 (1) (a) If there is a widow or widower and no children of the deceased, to such  
 14 widow or widower 50 percent of the average weekly wage of the deceased,  
 15 during widowhood or widowerhood.

16 (b) To the widow or widower, if there is a child or children living with the widow  
 17 or widower, 45 percent of the average weekly wage of the deceased, or 40  
 18 percent, if such child is not or such children are not living with a widow or  
 19 widower, and in addition thereto, 15 percent for each child. Where there are  
 20 more than two (2) such children, the indemnity benefits payable on account of  
 21 such children shall be divided among such children, share and share alike.

22 (c) Two (2) years' indemnity benefits in one (1) lump sum shall be payable to a  
 23 widow or widower upon remarriage.

24 (d) To the children, if there is no widow or widower, 50 percent of such wage for  
 25 one (1) child, and 15 percent for each additional child, divided among such  
 26 children, share and share alike.

27 (e) The income benefits payable on account of any child under this section shall

1           cease when he dies, marries, or reaches the age of eighteen (18), or when a  
2           child over such age ceases to be physically or mentally incapable of self-  
3           support, or if actually dependent ceases to be actually dependent, or, if  
4           enrolled as a full-time student in any accredited educational institution, ceases  
5           to be so enrolled or reaches the age of 22. A child who originally qualified as  
6           a dependent by virtue of being less than 18 years of age may, upon reaching  
7           age 18, continue to qualify if he satisfies the tests of being physically or  
8           mentally incapable of self-support, actual dependency, or enrollment in an  
9           educational institution.

10          (f) To each parent, if actually dependent, 25 percent.

11          (g) To the brothers, sisters, grandparents, and grandchildren, if actually  
12               dependent, 25 percent to each such dependent. If there should be more than  
13               one (1) of such dependents, the total income benefits payable on account of  
14               such dependents shall be divided share and share alike.

15          (h) The income benefits of each beneficiary under paragraphs (f) and (g) above  
16               shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be  
17               actually dependent, or, if a brother, sister, or grandchild, dies, marries, or  
18               reaches the age of eighteen (18) or if over that age ceases to be physically or  
19               mentally incapable of self-support, or ceases to be actually dependent.

20          (i) A person ceases to be actually dependent when his or her income from all  
21               sources exclusive of workers' compensation income benefits is such that, if it  
22               had existed at the time as of which the original determination of actual  
23               dependency was made, it would not have supported a finding of dependency.  
24               In any event, if the present annual income of an actual dependent person  
25               including workers' compensation income benefits at any time exceeds the total  
26               annual support received by the person from the deceased employee, the  
27               workers' compensation benefits shall be reduced so that the total annual

1 income is no greater than such amount of annual support received from the  
2 deceased employee. In all cases, a person found to be actually dependent shall  
3 be presumed to be no longer actually dependent three (3) years after each time  
4 as of which the person was found to be actually dependent. This presumption  
5 may be overcome by proof of continued actual dependency as defined in this  
6 subsection, but full payments shall not be suspended during the pendency of  
7 any proceeding to determine dependency.

8 (2) Upon the cessation of income benefits under this section to or on account of any  
9 person, the income benefits of the remaining persons entitled to income benefits for  
10 the unexpired part of the period during which their income benefits are payable  
11 shall be that which such persons would have received if they had been the only  
12 persons entitled to income benefits at the time of the decedent's death.

13 (3) For the purposes of this section, the average weekly wage of the employee shall be  
14 taken as not more than the average weekly wage of the state as determined in KRS  
15 342.740. In no case shall the aggregate weekly income benefits payable to all  
16 beneficiaries under this section exceed the maximum income benefit that was or  
17 would have been payable for total disability to the deceased, including benefits to  
18 his dependents.

19 (4) The maximum weekly income benefits payable for all beneficiaries in case of death  
20 shall not exceed 75 percent of the average weekly wage of the deceased as  
21 calculated under KRS 342.140, subject to the maximum limits in subsection (3)  
22 above. The maximum aggregate limitation shall not operate in case of payment of  
23 two (2) years' income benefits to the widow or widower upon remarriage as  
24 provided under paragraph (c) of subsection (1) of this section, to prevent the  
25 immediate recalculation and payments of benefits to the remaining beneficiaries as  
26 provided under subsection (2) of this section, but the weekly income benefits as to  
27 such remaining beneficiaries shall not exceed the weekly income benefit that was or



1 would have been payable for total disability to the deceased. The classes of  
 2 beneficiaries specified in paragraphs (a), (b), and (d) of subsection (1) of this  
 3 section shall have priority over all other beneficiaries in the apportionment of  
 4 income benefits. If the provisions of this subsection should prevent payment to  
 5 other beneficiaries of the income benefits to the full extent otherwise provided for  
 6 by this section, the gross remaining amount of income benefits payable to such  
 7 other beneficiaries shall be apportioned by class, proportionate to the interest of  
 8 each class in the remaining amount. Parents shall be considered to be in one class  
 9 and those specified in paragraph (f) of subsection (1) in another class.

10 (5) All relations of dependency referred to in this section shall mean dependency  
 11 existing at the time of the accident to the employee or at the time his or her  
 12 disability from an occupational disease began.

13 (6) In addition to other benefits as provided by this chapter, if death occurs within four  
 14 (4) years of the date of injury as a direct result of a work-related injury, a lump-sum  
 15 payment of fifty thousand dollars (\$50,000) shall be made to the deceased's estate,  
 16 from which the cost of burial and cost of transportation of the body to the  
 17 employee's place of residence shall be paid. Annually, the commissioner~~executive~~  
 18 ~~director~~ shall compute, in accordance with KRS 342.740, the increase or decrease  
 19 in the state average weekly wage, and consistent therewith, shall adjust the amount  
 20 of the lump-sum payment due under this subsection for injuries occurring in the  
 21 succeeding year.

22 (7) All benefits awarded pursuant to this section, other than those provided in  
 23 subsection (6) of this section, shall be subject to the limitations contained in KRS  
 24 342.730(4).

25 ➔Section 1847. KRS 342.760 is amended to read as follows:

26 (1) There is hereby authorized in the ~~[Department of]~~Labor Cabinet an uninsured  
 27 employers' fund for the purpose of making payments in accordance with the

1 provisions of subsection (4) of this section. The secretary~~[commissioner]~~ of the  
 2 ~~[Department of]~~Labor Cabinet shall be the custodian of the fund, and all moneys  
 3 and securities in the fund shall be held in trust by the secretary~~[commissioner]~~ of  
 4 the ~~[Department of]~~Labor Cabinet and shall not be considered a part of the general  
 5 funds of the state.

6 (2) The secretary~~[commissioner]~~ of the ~~[Department of]~~Labor Cabinet is authorized to  
 7 disburse moneys from the fund only upon written order of the administrative law  
 8 judge or the board.

9 (3) All amounts collected as fines and penalties under this chapter shall be paid into the  
 10 uninsured employers' fund.

11 (4) The uninsured employers' fund shall be responsible for the payment of  
 12 compensation when there has been default in the payment of compensation due to  
 13 the failure of an employer to secure payment of compensation as provided by this  
 14 chapter. Such employer shall be liable for payment into the fund of all the amounts  
 15 authorized to be paid therefrom under the authority of this subsection including  
 16 reimbursement of the special fund of all liability apportioned to it and for the  
 17 purposes of enforcing this liability the ~~[Department of]~~Labor Cabinet, for the  
 18 benefit of the fund, shall be subrogated to all the rights of the person receiving such  
 19 compensation from the fund. This provision shall apply to all pending claims upon  
 20 which a final order has not been entered.

21 (5) In furtherance of this purpose, the Attorney General shall appoint a member or  
 22 members of his or her staff or special counsel to represent the fund in all  
 23 proceedings brought to enforce claims against or on behalf of the fund. Necessary  
 24 expenses for this purpose including salaries of said staff or special counsel shall be  
 25 borne by the fund. The ~~[Department of]~~Labor Cabinet shall be responsible for the  
 26 administration of the uninsured employers' fund and shall be charged with the  
 27 conservation of the assets of the fund.

1 (6) On December 29, 1987, the liabilities of the uninsured employers' fund and its  
 2 assets remaining in the State Treasury shall be transferred to the uninsured  
 3 employers' fund created within the ~~{Department of}~~ Labor Cabinet pursuant to this  
 4 section.

5 ➔Section 1848. KRS 342.765 is amended to read as follows:

6 (1) Notwithstanding the provisions of KRS Chapter 342 to the contrary, the office of  
 7 the Attorney General shall be responsible for the administration of the uninsured  
 8 employers' fund and shall be charged with the conservation of the assets of the fund.  
 9 Funds to reimburse the Attorney General's office for expenses incurred in litigation  
 10 and administration in defense of the uninsured employers' fund shall be transferred  
 11 upon request of the Attorney General's office and approval by the  
 12 secretary~~{commissioner}~~ of the ~~{Department of}~~ Labor Cabinet.

13 (2) The office of the Attorney General shall report monthly to the Interim Joint  
 14 Committee on Appropriations and Revenue, the Interim Joint Committee on Labor  
 15 and Industry, and the commissioner~~{executive-director}~~ the amount of the agency  
 16 fund expenditures in each month for the uninsured employers' fund and the nature  
 17 of these expenditures. In addition, the Office of the Attorney General shall report  
 18 quarterly to the commissioner~~{executive-director}~~ on the amount of funds recouped  
 19 from uninsured employers.

20 ➔Section 1849. KRS 342.770 is amended to read as follows:

21 (1) Upon the filing of a claim the commissioner~~{executive-director}~~ shall ascertain  
 22 whether the employer, or any other person against whom a claim is filed and who is  
 23 not exempt by KRS 342.630 or 342.650, has secured payment of compensation by  
 24 either securing insurance coverage or qualifying as a self-insurer pursuant to KRS  
 25 342.340. Upon determination that any employer under this chapter has failed to  
 26 comply with the provisions of KRS 342.340, the commissioner~~{executive-director}~~  
 27 shall record, as provided by subsection (2) of this section, a certificate prepared and

1 furnished him or her by the general counsel showing the date on which such claim  
 2 was filed, the date of the injury alleged, the name and last known address of the  
 3 employer against whom it was filed, and the fact that the employer has not secured  
 4 the payment of compensation as required. Upon recordation, such certificate  
 5 constitutes a valid lien against the assets of the employer in favor of the uninsured  
 6 employers' fund for the whole amount which may be due as compensation. Such  
 7 lien shall be superior to the lien of any mortgage or other encumbrance thereafter  
 8 created and shall continue for ten (10) years from the time of such recording, unless  
 9 sooner released or otherwise discharged. A copy of such certificate shall be served  
 10 upon the employer by the commissioner~~executive director~~.

11 (2) The certificate constituting a lien in favor of the uninsured employers' fund shall be  
 12 filed in the following offices:

13 (a) The office of the county clerk of the county in which the defendant employer  
 14 resides.

15 (b) The office of the county clerk of the county in which the defendant employer  
 16 has its principal place of business.

17 (c) The office of the county clerk in the counties where such employer's property  
 18 is located.

19 ➔Section 1850. KRS 342.790 is amended to read as follows:

20 When an award is made against an employer who:

21 (1) Has not secured payment of compensation by either securing insurance coverage or  
 22 qualifying as a self-insurer; and

23 (2) Has not made a deposit of security, indemnity, or bond acceptable to the  
 24 commissioner~~executive director~~ to secure the payment of compensation liability;  
 25 and

26 (3) Has failed to make payment of compensation according to the terms of that award,  
 27 the award shall constitute a liquidated claim for damages against that employer in

an amount commuted to a lump sum which will equal the present value of the total sum of the probable future payments discounted at four percent (4%) true discount compounded annually on each payment, which amount is to be ascertained and fixed by the commissioner~~[executive director]~~, and the commissioner~~[executive director]~~ shall certify the same to the Attorney General who shall forthwith institute a civil action against that employer in the name of the uninsured employers' fund for the collection of that award. In that action, it shall be sufficient for plaintiff to set forth a copy of the award of the administrative law judge relative to the claim as certified by the commissioner~~[executive director]~~ and to state that there is due to plaintiff on account of the opinion, order, or award of the administrative law judge a specified sum which plaintiff claims with interest. A certified copy of the award in the claim shall be attached to the complaint and shall constitute prima facie evidence of the truth of the facts therein contained.

→ Section 1851. KRS 342.792 is amended to read as follows:

- (1) The claim of any miner last exposed to the occupational hazards of coal workers' pneumoconiosis between December 12, 1996, and July 15, 2002, shall nonetheless be governed by the provisions of KRS 342.732 and notwithstanding the provisions of KRS 342.125 all claims for benefits which were filed for last injurious occupational exposure to coal dust occurring between December 12, 1996, and July 15, 2002, shall be considered pursuant to the provisions of KRS 342.732 and administrative regulations promulgated by the commissioner~~[executive director]~~, and closed claims, except claims dismissed for reasons other than failure to meet medical eligibility standards, may be reopened by the claimant. Income or retraining incentive benefits shall be awarded thereon as if the entitlement standards established by the amendments to KRS 342.732 were effective at the time of last exposure. Any benefits previously granted by an award or settlement shall be credited against any subsequent award or settlement and no interest shall be payable

1 on additional benefits. A previous grant of retraining incentive benefits shall be  
 2 credited only to the extent that the benefits were actually paid. All income or  
 3 retraining incentive benefits greater than those which would have been awarded  
 4 were not these new provisions applicable shall be paid without interest from the  
 5 Kentucky coal workers' pneumoconiosis fund, the provisions of KRS 342.1242  
 6 notwithstanding.

7 (2) The original claim of any miner last exposed to the occupational hazards of coal  
 8 workers' pneumoconiosis prior to December 12, 1996, which was subject to a  
 9 university evaluation pursuant to KRS 342.315 and was dismissed upon a finding  
 10 that the miner did not prove the presence of coal workers' pneumoconiosis  
 11 radiographically may be reopened by the claimant notwithstanding the provisions of  
 12 KRS 342.125, pursuant to administrative regulations adopted by the  
 13 commissioner~~executive director~~. Income benefits may be awarded thereon  
 14 pursuant to entitlement standards effective as of the date of last exposure, except the  
 15 income or retraining benefits shall be paid without interest from the Kentucky coal  
 16 workers' pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding.

17 (3) Notwithstanding the provisions of KRS 342.316(4)(a), the coal workers'  
 18 pneumoconiosis claim of any miner last exposed between December 12, 1996, and  
 19 July 15, 2002, may be filed with the commissioner~~executive director~~ on or before  
 20 December 12, 2003, or within the time frame prescribed by KRS 342.316(4)(a),  
 21 whichever is longer. All income or retraining incentive benefits greater than those  
 22 which would have been awarded were not these new provisions applicable shall be  
 23 paid by the Kentucky coal workers' pneumoconiosis fund without interest, the  
 24 provisions of KRS 342.1242 notwithstanding.

25 (4) Administrative regulations promulgated by the commissioner~~executive director~~  
 26 pursuant to subsections (1) and (2) of this section shall provide that chest X-rays  
 27 previously taken at university medical schools pursuant to KRS 342.315 shall be

1 obtained by the commissioner~~[executive-director]~~ and forwarded to three (3)  
 2 randomly selected "B" readers for determination of consensus pursuant to KRS  
 3 342.316(3)(b)4.e.~~[-]~~ The claim shall be assigned to an administrative law judge for  
 4 determination of whether the claim should be reopened and the award of additional  
 5 benefits, if any.

6 ➔Section 1852. KRS 342.794 is amended to read as follows:

- 7 (1) The commissioner~~[executive-director]~~ shall maintain a list of duly qualified "B"  
 8 reader physicians who are licensed in the Commonwealth. The list shall include "B"  
 9 reader physicians at the university medical schools and other "B" reader physicians  
 10 certified by the National Institute of Occupational Safety and Health (NIOSH) who  
 11 have agreed to interpret chest X-rays pursuant to KRS 342.316 for a fee to be fixed  
 12 by the commissioner~~[executive-director]~~ and paid by the Kentucky coal workers'  
 13 pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding.
- 14 (2) Physicians from the "B" reader list shall be utilized as necessary to obtain consensus  
 15 classifications of chest films in coal workers' pneumoconiosis claims. The  
 16 consensus classification shall be presumed to be the correct classification of the  
 17 employee's condition unless overcome by clear and convincing evidence. If an  
 18 administrative law judge finds that the presumption of correctness of the consensus  
 19 reading has been overcome, the reasons shall be specially stated in the  
 20 administrative law judge's order.
- 21 (3) "'B' reader" means a physician who has demonstrated proficiency in evaluating  
 22 chest roentgenograms for roentgenographic quality and in the use of the ILO  
 23 classification for interpreting chest roentgenograms for pneumoconiosis and other  
 24 diseases by taking and passing a specially designed proficiency examination given  
 25 on behalf of the National Institute of Occupational Safety and Health (NIOSH) or  
 26 by the Appalachian Laboratory for Occupational Safety and Health (ALOSH), or  
 27 successors.

1 (4) The university medical schools in consultation with the commissioner~~executive~~  
 2 ~~director~~ shall jointly develop a procedure to annually report the performance of  
 3 physicians on the "B" reader list who have participated in the consensus procedure  
 4 established in KRS 342.316. The physicians shall be evaluated with respect to the  
 5 timeliness and completeness of their reports, as well as the frequency at which the  
 6 physician's classification of X-rays differs from the consensus reading. The  
 7 commissioner~~executive director~~ shall remove a physician from the "B" reader list  
 8 if the physician consistently renders incomplete or untimely reports, or if the  
 9 physician's interpretations of X-rays are not in conformity with the consensus  
 10 reading fifty percent (50%) of the time. The report required under this subsection  
 11 shall be provided to the Interim Joint Committee on Labor and Industry beginning  
 12 in July 1, 2003 and by July 1 of each year thereafter.

13 ➔Section 1853. KRS 342.796 is amended to read as follows:

14 (1) Notwithstanding any provisions of the KRS to the contrary, every employer  
 15 engaged in the severance or processing of coal, as defined in KRS 342.0011, at its  
 16 principal office and such other locations where employees customarily report for  
 17 payroll and personnel matters, shall conspicuously post a notice advising employees  
 18 of the education and training opportunities available under this chapter. The notice  
 19 shall include:

20 (a) Toll-free telephone numbers for the:

- 21 1. Department~~Office~~ of Workers' Claims;
- 22 2. Kentucky Community and Technical College System; and
- 23 3. Kentucky Higher Education Assistance Authority;

24 (b) Telephone numbers for the local board of education and centers for adult  
 25 education and literacy; and

26 (c) A list of approved education and training programs available to employees  
 27 engaged in the severance or processing of coal.



1 (2) The notice shall be made available to all employers at no cost and upon request of  
 2 the employer. The notice shall also be posted on the Web sites maintained by the  
 3 Department~~{Office}~~ of Workers' Claims and the Kentucky Community and  
 4 Technical College System.

5 ➔Section 1854. KRS 342.807 is amended to read as follows:

6 (1) The authority shall be governed by a board of directors. The board shall exercise  
 7 complete jurisdiction over the authority.

8 (2) The board shall consist of the:

9 (a) Secretary of the Finance and Administration Cabinet;

10 (b) Secretary of the Personnel Cabinet;

11 (c) Secretary of the Labor~~[Environmental and Public Protection]~~ Cabinet; and

12 (d) Seven (7) at-large members appointed by the Governor, subject to  
 13 confirmation by the Senate.

14 (3) Any vacancy which occurs prior to the expiration of a term shall be filled by the  
 15 Governor in the same manner as the initial appointment was made, and the new  
 16 appointee shall serve only the remainder of the unexpired term.

17 (4) No person shall serve on the board who:

18 (a) Fails to meet or comply with the conflict of interest policies established by the  
 19 board and KRS 304.24-270;

20 (b) Is not bondable;

21 (c) Is an employee, attorney, or contractor of a competing insurer providing  
 22 workers' compensation insurance in the Commonwealth; or

23 (d) Is not a resident of this Commonwealth.

24 (5) In making the appointments to the board, subject to Senate confirmation, the  
 25 Governor shall ensure adequate representation from the major sectors of the  
 26 economy and workforce in the Commonwealth.

27 ➔Section 1855. KRS 342.817 is amended to read as follows:

- 1 (1) The authority, through its board and manager, shall establish separate rating plans,  
2 rates, and underwriting standards for different classes of risks for the authority.
- 3 (2) The rating plans, rates, and underwriting standards developed for the categories of  
4 risk shall be based on generally-accepted actuarial practices and procedures as set  
5 forth in the Statement of Principles Regarding Property and Casualty Ratemaking of  
6 the Casualty Actuarial Society, in accordance with the actuarial standards of  
7 practice and compliance guidelines of the Actuarial Standards Board. The rates  
8 shall be actuarially sound for both the voluntary market and the market of last resort  
9 and set at levels which are expected, in the aggregate, to be sufficient to pay all  
10 workers' compensation claims incurred by the participating employer risks and other  
11 permitted expenses of the authority.
- 12 (3) Multitiered premium or rating plans may be developed to provide workers'  
13 compensation coverage to insureds in the Commonwealth.
- 14 (4) The manager shall develop statistical and other information as necessary to  
15 distinguish its writings in the voluntary market, and its writings as a market of last  
16 resort.
- 17 (5) The rates established by the authority for its policyholders shall be based only on  
18 Kentucky loss experience data, except that other loss experience data may be  
19 utilized as a supplement to Kentucky data if supplemental or additional data are  
20 necessary to establish statistical credibility of an employment classification.
- 21 (6) Any and all rates, whether for the voluntary market or the market of last resort,  
22 established by the board are deemed competitive and shall be filed with the  
23 commissioner~~executive director~~ of insurance in accordance with KRS Chapter  
24 304 in the same manner as any other mutual insurance company writing workers'  
25 compensation in the Commonwealth.
- 26 (7) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus  
27 requirements for mutual insurance companies in the Commonwealth shall not apply

1 to the authority until the authority has been in operation for eighty-four (84) months,  
 2 unless modified by the General Assembly. In addition to other reporting  
 3 requirements in KRS 342.809 and 342.821, the authority shall report to the Labor  
 4 and Industry Committee of the General Assembly, no later than October 31 of each  
 5 year, on the status of its efforts to build and maintain a surplus as required by KRS  
 6 Chapter 304.

7 ➔ Section 1856. KRS 342.823 is amended to read as follows:

8 (1) In determining the solvency of the authority in regard to maintaining adequate  
 9 reserves, the commissioner~~executive director~~ of insurance, the independent  
 10 accountant engaged for the annual audit, and the board, in exercising its prudent  
 11 stewardship, shall not utilize the practice of "discounting" the funds to reduce future  
 12 liabilities, except in conformity with standards or rules promulgated by the National  
 13 Association of Insurance Commissioners.

14 (2) The authority shall file reports required by KRS 304.3-240.

15 (3) The authority shall file a report not later than March 31 of each year indicating the  
 16 business done by the authority during the previous year, including a balance sheet  
 17 showing assets and liabilities at the beginning and conclusion of that year. The  
 18 report shall be a public record and shall be delivered to the Governor,  
 19 commissioner~~executive director~~ of insurance, Auditor of Public Accounts,  
 20 Attorney General, and the co-chairs of the Legislative Research Commission.  
 21 Additionally, a statement of solvency shall be prepared which shall include, at a  
 22 minimum:

- 23 (a) A summary of the prior quarterly reports required in KRS 342.821;
- 24 (b) A management projection of the future solvency status for the authority; and
- 25 (c) Any recommendations pertaining to the same.

26 (4) The authority shall not enter into any contract with a certified public accountant for  
 27 an audit unless the Auditor of Public Accounts has declined in writing to perform

1 the audit or has failed to respond within thirty (30) days of receipt of a written  
 2 request for an audit. Any contract with a certified public accountant entered into as  
 3 a result of the Auditor of Public Accounts declining to perform the audit shall  
 4 specify the following:

5 (a) That the certified public accountant shall forward a copy of the audit report  
 6 and management letters to the Auditor of Public Accounts, Attorney General,  
 7 and Legislative Research Commission; and

8 (b) That the Auditor of Public Accounts shall have the right to review the  
 9 certified public accountant's work papers.

10 (5) If at any time the assets of the authority are less than its liabilities, the board may  
 11 levy an assessment on its policyholders in the manner provided in Subtitle 24 of  
 12 KRS Chapter 304.

13 ➔Section 1857. KRS 342.902 is amended to read as follows:

14 As used in KRS 342.900 to 342.912, unless the context requires otherwise:

15 (1) "Insolvent self-insurer" means either an individual self-insured employer or a self-  
 16 insured group who has failed to pay compensation as a result of a declaration of  
 17 bankruptcy or insolvency by a court of competent jurisdiction, and whose security  
 18 deposit has been called by the commissioner~~[executive director]~~, or who has failed  
 19 to provide compensation and who has been issued a certificate of default by the  
 20 commissioner~~[executive director]~~ and whose security deposit has been called by the  
 21 commissioner~~[executive director]~~.

22 (2) "Member" means a self-insured employer or self-insured group that participates in a  
 23 guaranty fund created pursuant to KRS 342.900 to 342.912.

24 (3) "Guaranty fund" means one (1) of the three (3) guaranty funds established pursuant  
 25 to KRS 342.900 to 342.912.

26 (4) "Directors" means the board of directors of a guaranty fund.

27 (5) "Certificate of default" means a notice issued by the commissioner~~[executive~~

1     ~~director~~] based upon a finding that a self-insured employer or self-insured group has  
 2     failed to pay compensation required by this chapter.

3     ➔Section 1858. KRS 342.906 is amended to read as follows:

- 4     (1) There is created a nonprofit, unincorporated legal entity to be known as the  
 5     Kentucky individual self-insurance guaranty fund to function as the guaranty fund  
 6     for individually insured employers, excluding individually self-insured coal  
 7     employers, to secure workers' compensation liabilities under this chapter and  
 8     pursuant to administrative regulations promulgated by the commissioner~~[executive~~  
 9     ~~director]~~. Each noncoal, individually self-insured employer who has qualified and  
 10    been certified by the commissioner~~[executive director]~~ as a self-insured employer  
 11    on or after March 1, 1997, shall participate as a member of the guaranty fund  
 12    created pursuant to this subsection as a condition of maintaining its certificate  
 13    required to be self-insured under this chapter. The commissioner~~[executive~~  
 14    ~~director]~~ shall revoke any self-insurer's certificate and authority to be self-insured if  
 15    the self-insured employer fails to maintain membership in the guaranty fund or fails  
 16    to pay assessments levied by the guaranty fund created pursuant to this subsection.
- 17    (2) There is created a nonprofit, unincorporated legal entity known as the Kentucky  
 18    group self-insurance fund to function as a guaranty fund for self-insured groups or  
 19    associations established under KRS 342.350(4) and 304.50-010, to secure workers'  
 20    compensation liabilities under this chapter and pursuant to administrative  
 21    regulations promulgated by the commissioner~~[executive director]~~ of the  
 22    Department~~[Office]~~ of Insurance. Each self-insured group or association that is  
 23    authorized to self-insure and certified by the commissioner~~[executive director]~~ of  
 24    the Department~~[Office]~~ of Insurance to self-insure on or after March 1, 1997, shall  
 25    participate as a member of the guaranty fund created pursuant to the provisions of  
 26    this subsection, as a condition of maintaining its authorization and certificate to  
 27    self-insure. The commissioner~~[executive director]~~ of the Department~~[Office]~~ of

Insurance shall revoke any authorization and certificate to self-insure of any self-insured group or association for failure to maintain membership in the guaranty fund or failure to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.

(3) There is created a nonprofit, unincorporated legal entity known as the Kentucky coal employers self-insurance fund to function as a guaranty fund for individually self-insured coal employers to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner~~executive director~~. Each coal employer that is individually self-insured and that has been authorized and certified to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection as a condition of maintaining authorization and certification to self-insure. The commissioner~~executive director~~ shall revoke a coal employer's authority and certification to self-insure for failure to maintain membership in the guaranty fund or to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.

(4) The guaranty funds created pursuant to this section are created for the purposes of meeting the obligations of insolvent individually self-insured employers or members of a self-insured group or association incurred while members of a guaranty fund and after exhaustion of all security, including bonds, escrow deposits, insurance, or reinsurance, required by this chapter or KRS 304.50-045 and 304.50-050. The method of operation of each guaranty fund created pursuant to the provisions of this section shall be established by a plan of operation pursuant to administrative regulations promulgated by the commissioner~~executive director~~.

(5) The Kentucky individual self-insurance guaranty fund and the Kentucky coal employers self-insurance guaranty fund shall each be governed by a nine (9) member board of directors who shall serve staggered terms not to exceed four (4)

years, be representative of individual self-insurers, and be elected by the members of the guaranty fund. Each member of the board shall have one (1) vote. In addition to the nine (9) directors elected by the members, the commissioner~~[executive director]~~ of the Department~~[Office]~~ of Workers' Claims and the commissioner~~[executive director]~~ of the Department~~[Office]~~ of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A member of the board of directors may designate another member to act in the member's place as though the member were acting, and the designee's actions shall be deemed those of the member.

(6) The Kentucky group self-insurance guaranty fund shall be governed by a board of directors composed of one (1) representative of each self-insured group or association. In addition, the commissioner~~[executive director]~~ of the Department~~[Office]~~ of Workers' Claims and the commissioner~~[executive director]~~ of the Department~~[Office]~~ of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A director may designate another member to act in the member's place, and the designee's actions shall be deemed those of the director.

(7) Each guaranty fund created pursuant to this section shall establish bylaws and a plan of operation subject to prior approval of the commissioner~~[executive director]~~, necessary to the purposes of this chapter and to carry out the responsibilities of each guaranty fund. Each guaranty fund may carry out its responsibilities directly or by contract and may purchase services and insurance and borrow funds as it deems necessary for the protection of the members and their employees.

(8) Security called by the commissioner~~[executive director]~~ and disbursed to the guaranty funds, and assessments made upon members, shall vest in the guaranty funds, shall not thereafter be deemed state property, and shall not be subject to appropriation by the General Assembly or any other state agency.

1 (9) All moneys in the individual guaranty funds, exclusive of costs reasonably  
 2 necessary to conduct business, shall be used solely to compensate persons entitled  
 3 to receive workers' compensation benefits from a Kentucky member who has  
 4 defaulted in performance of its workers' compensation benefit payment obligations  
 5 under this chapter.

6 (10) No liability shall lie, whether at law or in equity, against any director, agent, or  
 7 employee of a guaranty fund created pursuant to this section, on account of any  
 8 action or inaction taken by any of them in the administration of a guaranty fund.

9 ➔Section 1859. KRS 342.908 is amended to read as follows:

10 (1) The commissioner~~[executive director]~~ shall notify a guaranty fund if the  
 11 commissioner~~[executive director]~~ has knowledge that any member of the guaranty  
 12 fund has failed to timely pay workers' compensation benefits required by this  
 13 chapter or if a court of competent jurisdiction has declared the member to be  
 14 bankrupt or insolvent.

15 (2) In the event of issuance of a certificate of default, the commissioner~~[executive~~  
 16 ~~director]~~ shall call all security and transfer it to the appropriate guaranty fund  
 17 created pursuant to this section. The commissioner~~[executive director]~~ shall also  
 18 immediately notify, by certified mail, the guaranty fund and order the guaranty fund  
 19 to assume the workers' compensation obligations of the member required in this  
 20 chapter. The guaranty fund shall commence payment of these obligations within  
 21 fourteen (14) days of receipt of notification and order of the  
 22 commissioner~~[executive director]~~. Payment shall be made to claimants whose  
 23 entitlement to benefits can be ascertained by the guaranty fund with or without  
 24 proceedings before the Department~~[Office]~~ of Workers' Claims or a court of  
 25 competent jurisdiction. Upon assumption of the obligations of a member by a  
 26 guaranty fund, the guaranty fund shall have the right to immediate possession of any  
 27 security, and the custodian, surety, or issuer of any irrevocable letter of credit shall



1 turn over the security, proceeds of the surety bond, or letter of credit to the guaranty  
2 fund, together with the interest that has accrued since the date of the member's  
3 insolvency. The guaranty fund may administer payment of benefits or it may retain  
4 a third party to do so.

5 (3) Notwithstanding any other provision of law, any cash, securities, irrevocable letters  
6 of credit, specific excess or aggregate excess insurance proceeds, or any other  
7 security deposited or posted in accordance with this section shall be used first, when  
8 due, to pay workers' compensation claims. After the security has been exhausted,  
9 the payment of workers' compensation claims from member assessments may be  
10 made. Where the guaranty fund member-assessment account is used to pay workers'  
11 compensation claims on an emergency or an interim basis, pending receipt by the  
12 guaranty fund of security which is due but not yet received, the member-assessment  
13 account shall be reimbursed for payment from the security when it is received, and  
14 the priorities stated above shall thereafter apply.

15 (4) To the extent necessary to secure funds for the initial establishment of each  
16 guaranty fund member-assessment account, the board of directors of each guaranty  
17 fund created pursuant to this section shall levy assessments based on the premium  
18 of each individual self-insured employer, as defined and calculated pursuant to KRS  
19 342.0011(28), for members of the Kentucky individual self-insurers guaranty fund  
20 and for the Kentucky coal employers self-insurance guaranty fund, and KRS  
21 342.0011(24) for the Kentucky group self-insurance guaranty fund, but no such  
22 assessments shall ever exceed, in the aggregate, from all members of a single  
23 guaranty fund, an amount in excess of one million dollars (\$1,000,000) at any given  
24 time. The assessments shall be made at a maximum annual assessment of: one-half  
25 of one percent (0.5%) of the premium for each member of the Kentucky individual  
26 self-insurance guaranty fund as defined and calculated pursuant to KRS  
27 342.0011(28); two percent (2%) of the premium for each member of the Kentucky

1 coal employers guaranty fund as defined and calculated pursuant to KRS  
 2 342.0011(28); and three-fourths of one percent (0.75%) of the premium for each  
 3 member of the Kentucky group self-insurance guaranty fund as defined and  
 4 calculated pursuant to KRS 342.0011(24).

5 (5) The initial assessment for each guaranty fund created pursuant to this section shall  
 6 be for an amount equal to five hundred thousand dollars (\$500,000), to be levied  
 7 and collected within a one (1) year period. There shall be no reassessments against  
 8 any member unless the current balance of such guaranty fund created pursuant this  
 9 section is insufficient after deducting the amount paid for or reserved for  
 10 outstanding claims and for administrative and other costs in managing the guaranty  
 11 fund at which point the board of directors shall raise assessments sufficient to bring  
 12 the minimum amount of the guaranty fund to five hundred thousand dollars  
 13 (\$500,000) or such other amount not to exceed, in any event, one million dollars  
 14 (\$1,000,000) based upon a maximum annual assessment for each guaranty fund.

15 (6) A guaranty fund created pursuant to this section shall pay no dividends, rebates,  
 16 interest, or otherwise distribute income from the guaranty fund to any of its  
 17 members, unless the guaranty fund has the assets prescribed in subsection (5) of this  
 18 section and the distributions are approved by the commissioner~~[executive-director]~~.

19 (7) The commissioner~~[executive-director]~~ shall be provided with any relevant  
 20 information by the employer, any excess insurer, any third party administrator, or  
 21 any issuer of any irrevocable letter of credit, issuer of any surety bond, or custodian  
 22 of any security necessary for the commissioner~~[executive-director]~~ to carry out the  
 23 commissioner's~~[executive-director's]~~ obligations under this chapter, and the  
 24 commissioner~~[executive-director]~~ shall provide this information to the guaranty  
 25 fund as necessary to carry out its obligations.

26 (8) The payment of benefits by a guaranty fund does not release any person or entity  
 27 from any liability to the individual guaranty fund for full reimbursement.

➔Section 1860. KRS 342.912 is amended to read as follows:

- (1) The directors of each guaranty fund shall annually contract for an independent certified audit of the financial activities of the guaranty fund. An annual report on the financial status of the guaranty fund as of June 30 of each year shall be submitted to the commissioner~~[executive director]~~ and to each member.
- (2) Each guaranty fund shall be established on March 1, 1997.
- (3) The individual guaranty fund shall be liable for payment of benefits only for members where there has been a declaration of bankruptcy or insolvency by a court of competent jurisdiction after the date on which the guaranty fund is established, or where the commissioner~~[executive director]~~ has issued a certificate of default which has occurred after the date on which the guaranty fund is established.

➔Section 1861. KRS 342.920 is amended to read as follows:

- (1) The General Assembly finds and declares that there is a need to protect employees of workers' compensation self-insured employers who had claims for injuries that occurred prior to the creation of the workers' compensation self-insurance guaranty funds under this chapter. The General Assembly further finds that there may be instances in which the security of a former self-insured employer is insufficient to pay the entire workers' compensation claim of an injured employee who was injured prior to March 1, 1997.
- (2) There is hereby established the self-insurance fund for the purpose of making payments to workers' compensation claimants injured prior to March 1, 1997, when the security of a former self-insured employer has been depleted.
- (3) (a) The commissioner~~[executive director]~~ shall be:
  1. Authorized to disburse moneys from the fund in accordance with written orders of an administrative law judge or the board; and
  2. Responsible for administration of the fund and conservation of the assets of the fund.

- 1       (b) The commissioner~~[executive director]~~ may hire an administrator to oversee  
2           the payment of claims as provided in this section.
- 3       (4) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, all  
4           amounts collected after July 12, 2006, as fines and penalties under KRS 342.267  
5           and 342.990 shall be paid into the self-insurance fund.
- 6       (5) The self-insurance fund shall be responsible for the payment of compensation when  
7           there has been a default in the payment of compensation by a self-insured employer  
8           and the security held by the Department~~[Office]~~ of Workers' Claims has been  
9           completely depleted.
- 10      (6) The Department~~[Office]~~ of Workers' Claims shall appoint an attorney on its staff or  
11          special counsel to represent the self-insurance fund in all proceedings brought to  
12          enforce claims against or on behalf of the self-insurance fund. Necessary expenses  
13          for this purpose including salaries or special counsel shall be borne by the self-  
14          insurance fund.
- 15      (7) Any party seeking reopening under KRS 342.125 or action on a claim involving the  
16          self-insurance fund shall name the self-insurance fund in its action.
- 17      (8) (a) The Workers' Compensation Funding Commission shall hold, invest, and  
18          reinvest the funds collected for the self-insurance fund;
- 19          (b) The funding commission shall have the same authority and duties with regard  
20          to the self-insurance fund as described in KRS 342.1223; and
- 21          (c) The funding commission shall disburse moneys of the fund as requested by  
22          the commissioner~~[executive director]~~ of the Department~~[Office]~~ of Workers'  
23          Claims pursuant to subsection (3) of this section.
- 24      (9) Amounts in the self-insurance fund not expended at the close of the fiscal year shall  
25          not lapse but shall be carried forward to the next fiscal year. Any interest earnings  
26          of the self-insurance fund shall become part of the fund and shall not lapse.
- 27      ➔Section 1862. KRS 342.990 is amended to read as follows:

- 1 (1) The commissioner~~[executive director]~~ shall initiate enforcement of civil and  
2 criminal penalties imposed in this section.
- 3 (2) When the commissioner~~[executive director]~~ receives information that he or she  
4 deems sufficient to determine that a violation of this chapter has occurred, he or she  
5 shall seek civil penalties pursuant to subsections (3) to (7) of this section, criminal  
6 penalties pursuant to subsections (8) and (9) of this section, or both.
- 7 (3) The commissioner~~[executive director]~~ shall initiate enforcement of a civil penalty  
8 by simultaneously citing the appropriate party for the offense and stating the civil  
9 penalty to be paid.
- 10 (4) If, within fifteen (15) working days from the receipt of the citation, a cited party  
11 fails to notify the commissioner~~[executive director]~~ that he or she intends to contest  
12 the citation, then the citation shall be deemed final.
- 13 (5) If a cited party notifies the commissioner~~[executive director]~~ that he or she intends  
14 to challenge a citation issued under this section, the commissioner~~[executive~~  
15 ~~director]~~ shall cause the matter to be heard as soon as practicable by an  
16 administrative law judge and in accordance with the provisions of KRS Chapter  
17 13B. The burden of proof shall be upon the attorney representing the  
18 commissioner~~[executive director]~~ to prove the offense stated in the citation by a  
19 preponderance of the evidence. The parties shall stipulate to uncontested facts and  
20 issues prior to the hearing before the administrative law judge. The administrative  
21 law judge shall issue a ruling within sixty (60) days following the hearing.
- 22 (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit  
23 Court in conformity with KRS 13B.140.
- 24 (7) The following civil penalties shall be applicable for violations of particular  
25 provisions of this chapter:
  - 26 (a) Any employer, insurer, or payment obligor subject to this chapter who fails to  
27 make a report required by KRS 342.038 within fifteen (15) days from the date

1 it was due, shall be fined not less than one hundred dollars (\$100) nor more  
 2 than one thousand dollars (\$1,000) for each offense.

3 (b) Any employer, insurer, or payment obligor acting on behalf of an employer  
 4 who fails to make timely payment of a statement for services under KRS  
 5 342.020(1) without having reasonable grounds to delay payment may be fined  
 6 not less than one hundred dollars (\$100) nor more than one thousand dollars  
 7 (\$1,000) for each offense.

8 (c) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.340,  
 9 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars  
 10 (\$100) nor more than one thousand dollars (\$1,000) for each offense. With  
 11 respect to employers who fail to maintain workers' compensation insurance  
 12 coverage on their employees, each employee of the employer and each day of  
 13 violation shall constitute a separate offense. With respect to KRS 342.040, any  
 14 employer's insurance carrier or other party responsible for the payment of  
 15 workers' compensation benefits shall be fined for failure to notify the  
 16 commissioner~~executive director~~ of a failure to make payments when due if a  
 17 report indicating the reason payment of income benefits did not commence  
 18 within twenty-one (21) days of the date the employer was notified of an  
 19 alleged work-related injury or disease is not filed with the  
 20 commissioner~~executive director~~ within twenty-one (21) days of the date the  
 21 employer received notice, and if the employee has not returned to work within  
 22 that period of time. The date of notice indicated in the report filed with the  
 23 department~~office~~ pursuant to KRS 342.038(1), shall raise a rebuttable  
 24 presumption of the date on which the employer received notice.

25 (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335,  
 26 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two  
 27 hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each

1 offense. With respect to KRS 342.395, each required notice of rejection form  
2 executed by an employee or potential employee of an employer shall  
3 constitute a separate offense.

4 (e) Any person who fails to comply with the data reporting provisions of  
5 administrative regulations promulgated by the commissioner~~executive~~  
6 ~~director~~ pursuant to KRS 342.039, or with utilization review and medical bill  
7 audit administrative regulations promulgated pursuant to KRS 342.035(5),  
8 shall be fined not less than one hundred dollars (\$100) nor more than one  
9 thousand dollars (\$1,000) for each violation.

10 (f) Except as provided in paragraph (g) of this subsection, a person who violates  
11 any of the provisions of KRS 342.335(1) or (2) where the claim,  
12 compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less  
13 than or equal to three hundred dollars (\$300) shall be fined per occurrence not  
14 more than one thousand dollars (\$1,000) per individual nor five thousand  
15 dollars (\$5,000) per corporation, or twice the amount of gain received as a  
16 result of the violation, whichever is greater.

17 (g) Any person who violates any of the provisions of KRS 342.335(1) or (2)  
18 where the claim, compensation, benefit, or money referred to in KRS  
19 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per  
20 occurrence not more than five thousand dollars (\$5,000) per individual nor ten  
21 thousand dollars (\$10,000) per corporation, or twice the amount of gain  
22 received as a result of the violation, whichever is greater.

23 (h) Any person who violates the employee leasing provision of this chapter shall  
24 be fined not less than five hundred dollars (\$500) nor more than five thousand  
25 dollars (\$5,000) for each violation.

26 (i) Any violation of the provisions of this chapter relating to self-insureds shall  
27 constitute grounds for decertification of such self-insured, a fine of not less

1           than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000)  
2           per occurrence, or both.

3           (j) Actions to collect the civil penalties imposed under this subsection shall be  
4           instituted in the Franklin District Court and the Franklin Circuit Court.

5       (8) The commissioner~~[executive director]~~ shall initiate enforcement of a criminal  
6       penalty by causing a complaint to be filed with the appropriate local prosecutor. If  
7       the prosecutor fails to act on the violation within twenty (20) days following the  
8       filing of the complaint, the commissioner~~[executive director]~~ shall certify the  
9       inaction by the local prosecutor to the Attorney General who shall initiate  
10      proceedings to prosecute the violation. The provisions of KRS 15.715 shall not  
11      apply to this section.

12     (9) The following criminal penalties shall be applicable for violations of particular  
13      provisions of this chapter:

14       (a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400,  
15       342.420, or 342.630, shall, for each offense, be fined not less than one  
16       hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or  
17       imprisoned for not less than thirty (30) days nor more than one hundred eighty  
18       (180) days, or both.

19       (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335,  
20       342.460, 342.465, or 342.470 shall, for each offense, be fined not less than  
21       two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or  
22       imprisoned for not less than thirty (30) days nor more than one hundred and  
23       eighty (180) days, or both.

24       (c) Any corporation, partnership, sole proprietorship, or other form of business  
25       entity and any officer, general partner, agent, or representative of the  
26       foregoing who knowingly utilizes or participates in any employee leasing  
27       arrangement or mechanism as defined in KRS 342.615 for the purpose of



depriving one (1) or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium shall upon conviction thereof be subject to a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisonment for not more than one hundred eighty (180) days, or both, for each offense.

(d) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

(10) Fines paid pursuant to KRS 342.267 and subsections (7) and (9) of this section shall be paid into the self-insurance fund established in KRS 342.920.

(11) In addition to the penalties provided in this section, the commissioner~~executive director~~ and any administrative law judge or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

➔Section 1863. KRS 343.010 is amended to read as follows:

As used in this chapter unless the context requires otherwise:

(1) "Apprentice" means a person at least sixteen (16) years of age who has entered into an apprenticeship agreement with an employer or an association of employers or an

- 1 organization of employees;
- 2 (2) "Apprenticeship agreement" means a voluntary written agreement entered into by  
 3 the apprentice or through his or her parent or guardian with an employer, or an  
 4 apprenticeship and training committee acting as agent for an employer, which  
 5 agreement contains the terms and conditions of the employment and training of the  
 6 apprentice to enable the apprentice to learn the trade, craft or business of the  
 7 employer;
- 8 (3) "~~Commissioner~~~~[Executive director]~~" means commissioner~~[executive director]~~ of  
 9 the Department~~[Office]~~ of Workplace Standards, under the direction and  
 10 supervision of the secretary~~[commissioner]~~ of the ~~[Department of]~~Labor Cabinet,  
 11 or any person authorized to act in his or her behalf, having jurisdiction over laws or  
 12 regulations governing wages and hours of employees working in this state;
- 13 (4) "Council" means apprenticeship and training council;
- 14 (5) "Supervisor" means supervisor of apprenticeship and training;
- 15 (6) "Trainee" means a person at least sixteen (16) years of age who has entered into an  
 16 on-the-job training agreement with an employer or an association of employers or  
 17 an organization of employees in a construction occupation under a program which  
 18 has been approved by a federal agency as promoting equal employment opportunity  
 19 in conjunction with federal-aid construction projects.
- 20 (7) "Apprenticeship program" means a plan containing all terms and conditions for the  
 21 qualification, recruitment, selection, employment, and training of apprentices,  
 22 including such matters as the requirement for a written apprenticeship agreement;
- 23 (8) "On-the-job training program" means a plan containing all terms and conditions for  
 24 the qualification, recruitment, selection, employment, and training of a trainee,  
 25 including such matters as the requirement for a written on-the-job training  
 26 agreement other than an apprenticeship program; provided, however, that said  
 27 program has been approved by a federal agency as promoting equal employment

1 opportunity in conjunction with federal-aid construction projects;

2 (9) "Sponsor" means any person, association, committee, or organization in whose  
3 name or title the program is or is to be registered, irrespective of whether such entity  
4 is an employer;

5 (10) "Employer" means any person or organization employing an apprentice or trainee  
6 whether or not such person or organization is a party to an apprenticeship or on-the-  
7 job training agreement with the apprentice or trainee;

8 (11) "Related instruction" means an organized and systematic form of instruction  
9 designed to provide the apprentice or trainee with knowledge of the theoretical and  
10 technical subjects related to his or her trade.

11 ➔ Section 1864. KRS 343.020 is amended to read as follows:

12 (1) (a) The Governor shall appoint an Apprenticeship and Training Council  
13 composed of four (4) representatives from employer organizations, four (4)  
14 representatives from employee organizations, and one (1) at-large member  
15 who shall serve for a term of four (4) years and until their successors are  
16 appointed and qualified. The commissioner~~[executive director]~~ of the  
17 Department~~[Office]~~ of Workplace Standards, the commissioner of the  
18 Department for Workforce Investment, and the chancellor for the Technical  
19 Institutions' Branch in the Kentucky Community and Technical College  
20 System shall be ex officio members of the council. The chairman shall be  
21 elected by vote of the Apprenticeship and Training Council.

22 (b) The regular members of the council shall each have one (1) vote. In the event  
23 of a tie vote among the regular members, the commissioner~~[executive~~  
24 ~~director]~~ of the Department~~[Office]~~ of Workplace Standards shall have the  
25 right to cast the tie-breaking vote. Each member of the council shall receive  
26 his or her actual and necessary expenses incurred in attending its meetings.

27 (c) The council shall meet at the call of the commissioner~~[executive director]~~ and

1 shall aid him or her in formulating policies for the effective administration of  
 2 this chapter. The commissioner~~[executive director]~~ with the aid of the council  
 3 shall have the authority to make and revise such rules and regulations as he or  
 4 she may deem appropriate to carry out the provisions and purposes of this  
 5 chapter.

6 (2) (a) On June 25, 2009, the terms of the council members appointed on September  
 7 12, 2006, shall end, and the Governor shall make the following appointments  
 8 to the Apprenticeship and Training Council:

9 1. Two (2) representatives from employer organizations, and two (2)  
 10 representatives from employee organizations to serve for terms that shall  
 11 expire on December 31, 2009;

12 2. Two (2) representatives from employer organizations, and two (2)  
 13 representatives from employee organizations to serve for terms that shall  
 14 expire on December 31, 2010; and

15 3. One (1) at-large member to serve for a term that shall expire on  
 16 December 31, 2011.

17 (b) Subsequent members shall serve terms of four (4) years and shall serve until  
 18 their successors are appointed and qualified.

19 (3) The council shall be attached to the~~[Department of]~~ Labor Cabinet for  
 20 administrative purposes.

21 ➔Section 1865. KRS 343.030 is amended to read as follows:

22 The commissioner~~[executive director]~~, with the approval of the Governor, may appoint a  
 23 supervisor of apprenticeship and training. This appointment shall be subject to the  
 24 confirmation of the council by a majority vote. He or she may also appoint such clerical,  
 25 technical, and professional help as shall be necessary to effectuate the purposes of this  
 26 chapter.

27 ➔Section 1866. KRS 343.040 is amended to read as follows:

1 The supervisor, under the direction of the commissioner~~[executive director]~~ and with the  
 2 advice and guidance of the council, may administer this chapter in cooperation with the  
 3 apprenticeship and training council; set up conditions and training standards for  
 4 apprenticeship or on-the-job training programs and agreements; act as secretary to the  
 5 council; approve, if in his or her opinion approval is to the best interest of both parties,  
 6 any apprenticeship or on-the-job training program and agreement submitted to him or her  
 7 by the parties thereto, that meets the standards established under this chapter; keep a  
 8 record of apprenticeship and on-the-job training programs and agreements and their  
 9 disposition; issue certificates of completion of apprenticeship and on-the-job training; and  
 10 perform such other duties as are necessary to carry out the intention of this chapter.

11 →Section 1867. KRS 343.070 is amended to read as follows:

12 (1) Upon the complaint of either party to the agreement, or upon his or her own  
 13 initiative, the supervisor may investigate or determine if there has been a violation  
 14 of the terms of the apprenticeship or on-the-job training agreement approved under  
 15 this chapter. He may conduct inquiries and other proceedings necessary to any  
 16 investigation and determination. The parties to the agreement shall, after reasonable  
 17 notice, be given an informal hearing. All informal hearings, investigations, and  
 18 determinations shall be made under authority of reasonable administrative  
 19 regulations promulgated by the council subject to the approval of the  
 20 commissioner~~[executive director]~~.

21 (2) The determination of the supervisor shall be filed with the commissioner~~[executive~~  
 22 ~~director]~~. If no appeal therefrom is filed with the commissioner~~[executive director]~~  
 23 within fifteen (15) days, the determination shall become final. Any party aggrieved  
 24 by any determination or action of the supervisor may appeal to the  
 25 commissioner~~[executive director]~~, who shall hold an administrative hearing in  
 26 accordance with KRS Chapter 13B.

27 (3) Any party to an apprenticeship or on-the-job training agreement aggrieved by a final

1 order of the commissioner~~[executive director]~~ may appeal to the Franklin Circuit  
2 Court.

3 ➔Section 1868. KRS 345.010 is amended to read as follows:

4 When used in this chapter:

5 (1) "Public employer" means a city of the first class or a consolidated local government,  
6 or any city that petitions the secretary~~[commissioner]~~ of the ~~[Department of]~~Labor  
7 Cabinet to be included by this chapter;

8 (2) "Firefighter" means an employee of the public employer engaged in serving the  
9 public by providing fire protection, including those covered by KRS Chapter 95;

10 (3) "Labor organization" means any chartered labor organization of any kind in which  
11 firefighters participate and which exists for the primary purpose of dealing with  
12 employers concerning grievances, labor disputes, wages, rate of pay, hours of  
13 employment, or conditions of employment;

14 (4) "Exclusive representative" means the labor organization which has been designated  
15 by the State Labor Relations Board as the representative of the majority of  
16 firefighters in appropriate units or has been so recognized by the public employer;

17 (5) "Board" means the State Labor Relations Board;

18 (6) "Person" includes one (1) or more individuals, labor organizations, associations,  
19 corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

20 (7) "Secretary~~[Commissioner]~~" means the secretary~~[commissioner]~~ of the ~~[Department~~  
21 ~~of]~~Labor Cabinet of the Commonwealth of Kentucky.

22 ➔Section 1869. KRS 345.080 is amended to read as follows:

23 (1) If after a reasonable period, but in no event less than thirty (30) days, of negotiations  
24 over the terms of a new collective bargaining agreement or modifications in an  
25 existing agreement the parties to the negotiations are deadlocked, either party or the  
26 parties jointly may petition the board, by certified mail, return receipt requested, or  
27 by registered mail, to initiate fact finding.

- 1 (2) Upon receipt of a petition to initiate fact finding, the secretary~~[commissioner]~~ shall  
2 cause an investigation to determine whether or not the parties are deadlocked in  
3 their negotiations. During the course of this investigation, the  
4 secretary~~[commissioner]~~ is empowered to utilize his or her office in an effort to  
5 effectuate a settlement between the parties through mediation and conciliation.
- 6 (3) Upon completion of the secretary's~~[commissioner's]~~ investigation, and if a  
7 settlement between the parties has still not been reached, the  
8 secretary~~[commissioner]~~ shall within five (5) days appoint a qualified and  
9 disinterested person as the impartial chairman of a three (3) man panel to function  
10 as the fact finders. In addition to the impartial chairman, the other two (2) members  
11 of the panel shall be one (1) member named by the labor organization and one (1)  
12 by the employer, parties to the deadlocked negotiations.
- 13 (4) Upon consultation with the other members of the panel, the impartial chairman shall  
14 establish dates and places for public hearings. Whenever feasible, public hearings  
15 shall be held within the jurisdiction in which the employer is located. The panel  
16 may subpoena witnesses, and a written transcript of the hearing shall be made.  
17 Upon completion of the hearings the panel shall, by majority decision, make written  
18 findings of fact and recommendations for solution of the dispute. The panel shall  
19 cause all of its written findings, recommendations, and opinions to be served on the  
20 employer and labor organization (parties) and same shall be released to the public.  
21 Expenses incurred by the three (3) man panel in this section shall be paid by the  
22 parties involved in the labor dispute.
- 23 (5) The secretary~~[commissioner]~~ may adopt, promulgate, amend, and rescind such  
24 rules and regulations as he or she deems necessary and administratively feasible not  
25 inconsistent with the provisions of this chapter to carry out his or her  
26 responsibilities over the fact-finding procedures set forth in this section. However,  
27 unless the parties agree to extend the time for the hearings, they must be completed

1 with recommendations from the fact-finding panel, within one hundred twenty  
2 (120) days from the date the petition to initiate the fact-finding procedure was  
3 received by the secretary~~[commissioner]~~.

4 ➔ Section 1870. KRS 345.120 is amended to read as follows:

5 (1) There is hereby created and established a State Labor Relations Board to assist in  
6 resolving disputes between public employers and firefighters or their labor  
7 organization which shall be composed of three (3) members appointed by the  
8 Governor, one (1) for a term of two (2) years, one (1) for a term of three (3) years,  
9 and one (1) for a term of four (4) years. The Governor shall designate one (1)  
10 member to serve as chairman of the board. Thereafter, upon the expiration of the  
11 term of any member, members shall be appointed for four (4) year terms by the  
12 Governor.

13 (2) Each member of the board shall have been an elector in this state for at least one (1)  
14 year next preceding his or her appointment. Any member may be removed by the  
15 Governor for cause, shown in an administrative hearing conducted in accordance  
16 with KRS Chapter 13B. The Governor shall fill any vacancy by appointment for the  
17 unexpired term. No member shall receive a salary but each member shall be paid  
18 fifty dollars (\$50) and expenses for each day during which he or she is engaged in  
19 the duties of the board. The board is authorized to hold hearings at any place in this  
20 state. Any and all expenses incurred by the Labor Relations Board shall be shared  
21 by all parties concerned in the dispute.

22 (3) The board shall appoint employees necessary to carry out the work of the board. All  
23 files, records, and documents accumulated by the board shall be kept in offices  
24 provided by the board. All decisions shall be made by a majority of the board.

25 (4) To accomplish the objectives and to carry out the duties prescribed by this chapter,  
26 the board may subpoena witnesses; issue subpoenas to require the production of  
27 books, papers, records, and documents which may be needed as evidence in any



1 matter under inquiry; and administer oaths and affirmations.

2 (5) In case of neglect or refusal to obey a subpoena issued to any person, the Circuit  
3 Court of the county in which the investigations or the public hearings are taking  
4 place, upon application by the board may issue an order requiring the person to  
5 appear before the board, any member, or agent, to produce evidence or give  
6 testimony about the matter under investigation. A failure to obey a court order may  
7 be punished by the court as a contempt.

8 (6) Any subpoena, notice of hearing, or other process or notice of the board issued  
9 under the provisions of this chapter, with the exception of notice requirements for  
10 administrative hearings as provided in KRS Chapter 13B, may be served personally,  
11 by certified mail, return receipt requested, or by leaving a copy at the principal  
12 office or place of residence of the respondent required to be served. A return, made  
13 and verified by the individual making service and setting forth the manner of  
14 service, is proof of service and a returned post-office receipt, when certified mail is  
15 used, is proof of service. All process of any court to which application may be made  
16 under the provisions of this chapter may be served in the county in which the  
17 persons required to be served reside or may be found.

18 (7) The board shall, promulgate, amend, or repeal any administrative regulations  
19 necessary and administratively feasible to carry out the provisions of this chapter.  
20 Public hearings shall be held by the board, pursuant to KRS Chapter 13A, on any  
21 proposed administrative regulation of general applicability designed to implement,  
22 interpret, or prescribe policy, procedure, or practice requirements under the  
23 provisions of this chapter and on any proposed change in an existing administrative  
24 regulation.

25 (8) The board shall be attached to the [~~Department of~~]Labor Cabinet for administrative  
26 purposes.

27 ➔Section 1871. KRS 349.010 is amended to read as follows:

1 As used in this chapter:

- 2 (1) "Abandoned" when used in connection with a well or hole means a well or hole  
3 which has never been used, or which, in the opinion of the department, will no  
4 longer be used for the production of coalbed methane or the injection or disposal of  
5 fluid therein;
- 6 (2) "Coal interest holder" means every record coal owner, record coal lessee, mine  
7 licensee as defined in KRS 352.010(1)(s) and mine permittee as defined in KRS  
8 350.010(21) whose coalbed is penetrated, or proposed to be penetrated, by a  
9 coalbed methane well;
- 10 (3) "Coalbed" or "coal seam" means a seam of coal, whether workable or unworkable;
- 11 (4) "Coalbed methane" means gas produced from a reservoir found in a coalbed, a  
12 mined-out area, or gob;
- 13 (5) "Coalbed methane well" means any well drilled, deepened, converted, or reopened  
14 for the purpose of capturing coalbed methane for sale or use. Any well initially used  
15 for a coal mining-related purpose, such as a vent well, but which is subsequently  
16 used for the purpose of recovering coalbed methane for sale or use, shall then be  
17 deemed to be a coalbed methane well and shall comply with the provisions of this  
18 chapter at the time that the well is converted or used for the purpose of recovering  
19 coalbed methane for sale or use;
- 20 (6) "Commissioner" means the commissioner of the Department for Natural Resources;
- 21 (7) "Correlative rights" means the reasonable opportunity of each person entitled to  
22 recover, without waste, the coalbed methane in and under his or her tract or tracts,  
23 or the equivalent thereof;
- 24 (8) "Department" means the Department for Natural Resources;
- 25 (9) "Director" means the director of the Division of Oil and Gas ~~{Conservation}~~ as  
26 established in KRS 353.530;
- 27 (10) "Drilling unit" means the maximum area in a pool which may be drained efficiently

1 by one (1) well so as to produce the reasonable maximum recoverable coalbed  
2 methane in the area. Where the department has provided rules for the establishment  
3 of a drilling unit and an operator, proceeding within the framework of the rules so  
4 prescribed, has taken the action necessary to have a specified area established for  
5 production from a well, the area shall be a drilling unit;

6 (11) "Division" means the Division of Mine Permits in the Department for Natural  
7 Resources;

8 (12) "Field rules" means rules established by orders of the review board relating to the  
9 drilling, completion, production of, and specifications for coalbed methane wells in  
10 a particular geographic area as defined by an order;

11 (13) "Gob" means the de-stressed zone associated with any full-seam extraction of coal  
12 that extends above and below the mined-out coalbed;

13 (14) "Gob well" means a well drilled or a vent hole converted to a well pursuant to this  
14 chapter which produces or is capable of producing coalbed methane for sale or use,  
15 from a de-stressed zone associated with any full seam extraction of coal that  
16 extends above or below a mined-out coalbed;

17 (15) "Horizontally drill" or "horizontal drilling" means the intentional act of drilling a  
18 borehole, shaft, or hole, which deviates from vertical for the purpose of penetrating  
19 a coal seam to produce coalbed methane;

20 (16) "Mine licensee" means the mine licensee as defined in KRS 352.010(1)(s);

21 (17) "Mine permittee" means the permittee as defined in KRS 350.010(21);

22 (18) "Nonparticipating working interest owner" means a coalbed methane owner or  
23 lessee of a tract included in a drilling unit who elects to share in the operation of the  
24 coalbed methane well on a carried basis by agreeing to have his or her proportionate  
25 share of the costs allocable to his or her interest charged against his or her share of  
26 production from the coalbed methane well;

27 (19) "Nonparticipating operator" means a nonparticipating working interest owner who

- 1 is also the operator of the coalbed methane well;
- 2 (20) "Operator" means any owner of the right to drill, develop, operate, and produce  
3 coalbed methane from a pool and to appropriate the coalbed methane produced  
4 therefrom, either for himself or herself, or for himself, herself, and others; in the  
5 event there is no coalbed methane lease in existence with respect to the tract in  
6 question, the owner of the coalbed methane rights therein shall be considered as an  
7 "operator" to the extent of seven-eighths (7/8) of the coalbed methane in that  
8 portion of the pool underlying the tract owned by that owner, and as a "royalty  
9 owner" as to one-eighth (1/8) interest in that coalbed methane;
- 10 (21) "Other interested coalbed methane parties" means all working interest owners other  
11 than the operator, all royalty and overriding royalty interest owners or holders, and  
12 any other party who owns or holds a right or interest in a drilling unit, coalbed  
13 methane well site for which a drilling permit has been issued or is pending, and all  
14 associated equipment, facilities, infrastructure, and improvements;
- 15 (22) "Participating working interest owner" means a coalbed methane owner or lessee  
16 who elects to bear a share of the risks and costs of drilling, completing, equipping,  
17 operating, plugging, and abandoning a coalbed methane well equal to the proportion  
18 which the acreage in the drilling unit he or she owns or holds under lease bears to  
19 the total acreage of the drilling unit;
- 20 (23) "Participating operator" means a participating working interest owner who is also  
21 the operator of the coalbed methane well;
- 22 (24) "Person" means any person, corporation, association, partnership, limited liability  
23 company, receiver, governmental agency subject to this chapter, trustee, so-called  
24 common law or statutory trust, guardian, executor, administrator, or fiduciary of any  
25 kind, federal agency, state agency, city, commission, political subdivision of the  
26 Commonwealth, or any interstate body;
- 27 (25) "Plat" means a map, drawing, or print showing the location of a well;

- 1 (26) "Review board" means the Coalbed Methane Well Review Board;
- 2 (27) "Royalty owner" means any owner of coalbed methane in place, or coalbed methane  
3 rights, to the extent that the owner is not an operator as defined in subsection (20) of  
4 this section;
- 5 (28) "Stimulate" means any action taken to increase the flow of coalbed methane, or the  
6 inherent productivity of a coalbed methane well, including but not limited to  
7 fracturing, shooting, acidizing, or waterflooding, but excluding cleaning out,  
8 bailing, or workover operations;
- 9 (29) "Surface owner" means the person in whose name the surface of the land is assessed  
10 for purposes of taxes imposed according to the property valuation administrator;
- 11 (30) "Unit" means any tract or tracts which the department has determined are underlaid  
12 by a pool or pools of coalbed methane and are not drilling units as defined in  
13 subsection (10) of this section;
- 14 (31) "Unitization" means the act of combining separately owned tracts or separate  
15 interests therein into a unit constituting all or some portion of a coalbed that  
16 produces or is capable of producing coalbed methane and the joint operation of that  
17 unit;
- 18 (32) "Unit operator" means the party designated in a pooling order to develop a unit by  
19 the drilling of one (1) or more coalbed methane wells;
- 20 (33) "Vent hole" means a borehole, shaft driven, or hole dug, drilled, deepened,  
21 converted or reopened, which is used for the purpose of releasing or venting  
22 coalbed methane to the atmosphere and not for the purpose of capturing or  
23 producing coalbed methane for sale or use;
- 24 (34) "Venting" means the act of releasing coalbed methane to the atmosphere;
- 25 (35) "Well" means any borehole, shaft driven, or hole dug, drilled, deepened, converted  
26 or reopened for the purpose of capturing or producing coalbed methane for sale or  
27 use; and

1 (36) "Workable coalbed" means:

- 2 (a) Any coalbed twenty-four (24) inches or more in thickness;
- 3 (b) Any coalbed actually being operated commercially;
- 4 (c) Any coalbed that the department decides can be operated commercially, and
- 5 the operation of which can reasonably be expected to commence within not
- 6 more than ten (10) years; or
- 7 (d) Any coalbed that, from outcrop indication or other definite evidence, proves to
- 8 the satisfaction of the department to be workable and, when operated, will
- 9 require protection if wells are drilled through or into it.

10 ➔Section 1872. KRS 349.055 is amended to read as follows:

- 11 (1) The Coalbed Methane Well Review Board is hereby established. The review board
- 12 shall be composed of five (5) members and shall have the powers and duties
- 13 specified under this chapter.
- 14 (2) The review board shall consist of the commissioner of the Department for Natural
- 15 Resources or his or her designee within the department, the director of the Division
- 16 of Mine Reclamation and Enforcement and the director of the Division of Oil and
- 17 Gas[~~Conservation~~] within the Department for Natural Resources, a representative
- 18 of the oil and gas industry, and a representative of the coal industry. The
- 19 representatives from the oil and gas industry and the coal industry shall be
- 20 appointed by the Governor for terms of four (4) years subject to confirmation by the
- 21 Senate.
- 22 (3) The review board shall be, for administrative purposes only, attached to the Energy
- 23 and Environment[~~Environmental and Public Protection~~] Cabinet, Department for
- 24 Natural Resources.

25 ➔Section 1873. KRS 350.010 is amended to read as follows:

26 As used in this chapter, unless the context requires otherwise:

- 27 (1) "Surface coal mining operations" means activities conducted on the surface of lands

1 in connection with a surface coal mine and surface impacts incident to an  
2 underground coal mine. The activities shall include excavation for the purpose of  
3 obtaining coal, including such common methods as contour, strip, auger, extended  
4 depth secondary recovery systems, mountaintop removal, box cut, open pit, and area  
5 mining, the use of explosives and blasting, and in situ distillation or retorting,  
6 leaching, or other chemical or physical processing, and cleaning, concentrating, or  
7 other processing or preparation, and the loading of coal at or near the mine site.  
8 Excavation for the purpose of obtaining coal includes extraction of coal from refuse  
9 piles. The activities shall not include the extraction of coal by a landowner of fifty  
10 (50) tons or less within twelve (12) successive calendar months for his own  
11 noncommercial use from land owned or leased by him; the extraction of twenty-five  
12 (25) to two hundred fifty (250) tons of coal as an incidental part of privately  
13 financed construction where the coal is donated to a charitable or educational  
14 organization for noncommercial use or noncommercial distribution; the extraction  
15 of coal as an incidental part of federal, state, or local government financed highway  
16 or other construction under administrative regulations established by the cabinet;  
17 the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any  
18 person by surface coal mining operations within twelve (12) successive calendar  
19 months; the extraction of coal incidental to the extraction of other minerals where  
20 coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of  
21 minerals removed for purposes of commercial use or sale; or coal exploration  
22 subject to KRS 350.057. Surface coal mining operations shall also include the areas  
23 upon which the activities occur or where the activities disturb the natural land  
24 surface. The areas shall also include any adjacent land, the use of which is  
25 incidental to the activities, all lands affected by the construction of new roads or the  
26 improvement or use of existing roads to gain access to the site of the activities and  
27 for haulage, and excavations, workings, impoundments, dams, ventilation shafts,

entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities. This definition shall include the terms "strip mining" of coal and the "surface effects of underground mining" of coal as used in this chapter;

(2) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a landowner for his own noncommercial use of fifty (50) tons or less within twelve (12) successive calendar months from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; coal exploration subject to KRS 350.057; nor shall it include the surface effects or surface impacts of underground coal mining;

(3) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of the operations as required by this chapter;

(4) "Overburden" means material of any nature, consolidated or unconsolidated,



- 1       excluding topsoil, which lies above a natural deposit of coal and also means the  
2       material after removal from its natural state in the process of surface coal mining;
- 3       (5) "Area of land affected" means any area of land or water upon which surface coal  
4       mining and reclamation operations are conducted or located or are to be conducted  
5       or located;
- 6       (6) "Operations" means surface coal mining operations, all of the premises, facilities,  
7       roads, and equipment used in the process of producing coal from a designated area  
8       or removing overburden for the purpose of determining the location, quality, or  
9       quantity of a natural coal deposit or the activity to facilitate or accomplish the  
10      extraction or the removal of coal;
- 11      (7) "Method of operation" means the method or manner by which the cut or open pit is  
12      made, the overburden is placed or handled, water is controlled, and other acts are  
13      performed by the operator in the process of uncovering and removing the coal;
- 14      (8) "Operator" means any person, partnership, or corporation engaged in surface coal  
15      mining operations who removes or intends to remove more than twenty-five (25)  
16      tons of coal from the earth by coal mining within twelve (12) consecutive calendar  
17      months in any one (1) location;
- 18      (9) "Person" means any individual, partnership, corporation, association, society, joint  
19      stock company, firm, company, or other business organization and shall also  
20      include any agency, unit, or instrumentality of federal, state, or local government  
21      including any publicly-owned utility or publicly-owned corporation of federal, state,  
22      or local government;
- 23      (10) "Cabinet" means the Energy and Environment~~Environmental and Public~~  
24      ~~Protection~~] Cabinet;
- 25      (11) "Secretary" means the secretary of the Energy and Environment~~Environmental~~  
26      ~~and Public Protection~~] Cabinet;
- 27      (12) "Reclamation" means the reconditioning of the area affected by surface coal mining

- 1 operations under a plan approved by the cabinet;
- 2 (13) "Degree" when used in this chapter shall mean from the horizontal, and in each case  
3 shall be subject to a tolerance of five percent (5%) of error;
- 4 (14) "Bench" means the ledge, shelf, or terrace formed in the contour method of strip  
5 mining;
- 6 (15) "Approximate- original contour" means that surface configuration achieved by  
7 backfilling and grading of the mined area so that the reclaimed area, including any  
8 terracing or access roads, closely resembles the general surface configuration of the  
9 land prior to mining and blends into and complements the drainage pattern of the  
10 surrounding terrain, with all highwalls and spoil piles eliminated; water  
11 impoundments may be permitted where the cabinet determines that they are in  
12 compliance with KRS 350.455;
- 13 (16) "Certification" by a qualified registered professional engineer, as required by this  
14 chapter and administrative regulations promulgated hereunder, means a good faith  
15 representation to the best of his or her knowledge and belief, based on adequate  
16 knowledge of the requirements of this chapter and administrative regulations  
17 promulgated hereunder, related experience, best professional judgment, accepted  
18 engineering practices and recognized professional standards, and standard practice  
19 as it relates to direct participation by the registered professional engineer or  
20 supervision of the registered professional engineer's employees or subordinates.  
21 Certification shall not be construed to constitute a warranty or guarantee;
- 22 (17) "Reclamation development fund" means only that reconditioning of land affected by  
23 surface mining, which will directly promote and benefit the fund administered by  
24 the Kentucky Economic Development Finance Authority to foster economic  
25 development on surface mining land;
- 26 (18) "Reclamation development project" means only that reconditioning of land affected  
27 by surface mining, which will directly promote and benefit an economic

1       undertaking which constitutes a project under KRS 154.01-010(20);

2       (19) "Reclamation development plan" means a plan submitted to the cabinet to show  
3       compliance with reclamation standards, and submitted to the Kentucky Economic  
4       Development Finance Authority to seek moneys from the reclamation development  
5       fund for a reclamation development project;

6       (20) "Permit applicant" or "applicant" means a person applying for a permit;

7       (21) "Permittee" means a person holding a permit to conduct surface coal mining and  
8       reclamation operations;

9       (22) "Unanticipated event or condition" as used in KRS 350.085(7) means an event or  
10       condition encountered in a remining operation that was not contemplated by the  
11       applicable surface coal mining and reclamation permit;

12       (23) "Lands eligible for remining" means those lands that would otherwise be eligible for  
13       expenditures under KRS 350.560(1) or (2);

14       (24) "Coal combustion by-products" means fly ash, bottom ash, scrubber sludge, and  
15       waste from fluidized bed combustion, produced by the combustion of coal. Coal  
16       combustion by-products do not include boiler slag, or residues of refuse derived  
17       fuels, such as municipal solid waste, tires, and solvents;

18       (25) "NAD 83" means the North American Datum, 1983 version, in feet units; and

19       (26) "Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate  
20       System of 1983, based on the Lambert Conformal map projection with double  
21       standard parallels on the North American Datum, as established in 10 KAR 5:010.

22       ➔Section 1874. KRS 350.020 is amended to read as follows:

23       The General Assembly finds that the Commonwealth is the leading producer of coal and  
24       that the production of coal in Kentucky contributes significantly to the nation's energy  
25       needs. The General Assembly further finds that unregulated surface coal mining  
26       operations cause soil erosion, damage from rolling stones and overburden, landslides,  
27       stream pollution, the accumulation of stagnant water and the seepage of contaminated

1 water, increase the likelihood of floods, destroy the value of land for agricultural  
 2 purposes, destroy aesthetic values, counteract efforts for the conservation of soil, water  
 3 and other natural resources, destroy or impair the property rights of citizens, create fire  
 4 hazards, and in general create hazards dangerous to life and property, so as to constitute  
 5 an imminent and inordinate peril to the welfare of the Commonwealth. The General  
 6 Assembly further finds that lands that have been subjected to surface coal mining  
 7 operations and have not been reclaimed and rehabilitated in accordance with modern  
 8 standards constitute the aforementioned perils to the welfare of the Commonwealth. The  
 9 General Assembly further finds that there are wide variations in the circumstances and  
 10 conditions surrounding and arising out of surface coal mining operations due primarily to  
 11 difference in topographical and geological conditions, and by reason thereof it is  
 12 necessary, in order to provide the most effective, beneficial and equitable solution to the  
 13 problem, that a broad discretion be vested in the authority designated to administer and  
 14 enforce the regulatory provisions enacted by the General Assembly. The General  
 15 Assembly further finds that governmental responsibility for regulating surface coal  
 16 mining operations rests with state government and hereby directs the Energy and  
 17 Environment~~[Environmental and Public Protection]~~ Cabinet to take all actions necessary  
 18 to preserve and exercise the Commonwealth's authority, to the exclusion of all other  
 19 governmental entities except the Commonwealth and agencies thereof and except as  
 20 provided in KRS Chapter 100, and any county surface mining regulation contained within  
 21 a zoning ordinance adopted prior to April 1, 1988, in regulating surface coal mining  
 22 operations. Therefore, it is the purpose of this chapter to provide such regulation and  
 23 control of surface coal mining operations as to minimize or prevent injurious effects on  
 24 the people and resources of the Commonwealth. To that end, the cabinet is directed to  
 25 rigidly enforce this chapter and to adopt whatever administrative regulations are found  
 26 necessary to accomplish the purpose of this chapter.

27 ➔Section 1875. KRS 350.028 is amended to read as follows:

1 The **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet shall have  
2 and exercise the following authority and powers:

- 3 (1) To adopt administrative regulations after a hearing pertaining to surface coal mining  
4 operations including strip mining and the surface effects of underground mining to  
5 accomplish the purposes of this chapter;
- 6 (2) To conduct investigations and hearings under provisions of this chapter or  
7 regulations adopted pursuant thereto;
- 8 (3) To issue, after an opportunity for a hearing, suspension orders or show cause orders  
9 requiring an operator, permittee, or person to adopt remedial measures that are  
10 necessary to comply with this chapter and administrative regulations adopted  
11 pursuant thereto. Failure to attend a hearing shall be excused for good cause shown;
- 12 (4) To issue, after an opportunity for a hearing, a final order imposing civil penalties for  
13 violations of this chapter or directing the Department for Natural Resources to  
14 revoke a permit, when the requirements set forth by the notice of noncompliance,  
15 order of cessation, or an order of the cabinet requiring remedial measures have not  
16 been complied with according to the terms therein. When the secretary or his  
17 authorized representatives determines that a pattern of violations of any  
18 requirements of this chapter or any permit conditions required by this chapter exists  
19 or has existed, and if the secretary or his authorized representatives also find that the  
20 violations are caused by the unwarranted failure of the permittee to comply with any  
21 requirements of this chapter or any permit conditions or that the violations are  
22 willfully caused by the permittee, the secretary or his authorized representative shall  
23 forthwith issue an order to the permittee to show cause as to why the permit should  
24 not be suspended or revoked and shall provide an opportunity for a hearing. Failure  
25 to attend a hearing shall be excused for good cause shown; and
- 26 (5) To adopt administrative regulations to allow the state to administer and enforce the  
27 initial and permanent regulatory programs of Public Law 95-87, "Surface Mining

Control and Reclamation Act of 1977." Administrative regulations shall be no more stringent than required by that law. Nothing in this chapter shall be construed as superseding, amending, modifying, or repealing any of the acts listed in Section 702(a) of Public Law 95-87, or any administrative regulation promulgated thereunder.

➔Section 1876. KRS 350.050 is amended to read as follows:

The **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet under the supervision of the secretary of the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet shall have and exercise the following authority and powers:

- (1) To exercise general supervision and administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder;
- (2) To encourage and conduct investigations, research, experiments, and demonstrations, and to collect and disseminate information relating to strip mining and reclamation of lands and waters affected by strip mining;
- (3) To adopt, without hearing, internal procedures with respect to the filing of reports, the issuance of permits, and other matters of procedure and administration;
- (4) To examine and pass upon all plans and specifications submitted by the permit applicant for the method of operation, backfilling, grading, and for the reclamation of the area of land affected by his operation;
- (5) To make investigations or inspections which may be deemed necessary to insure compliance with any provision of this chapter;
- (6) To order, through personnel of the cabinet, the suspension of any permit for failure to comply with any of the provisions of this chapter or any regulations adopted pursuant thereto;
- (7) To order, through personnel of the cabinet, the stopping of any operation that is started without first having secured a permit as required by this chapter.

➔Section 1877. KRS 350.054 is amended to read as follows:

1 (1) There is established a special fund to be known as the "Illegal Mining and  
 2 Conveyance Reclamation Fund" which shall be under the control of the Energy and  
 3 Environment~~[Environmental and Public Protection]~~ Cabinet.

4 (2) The fund shall consist of all moneys from the sale or forfeiture of all  
 5 instrumentalities used in violation of KRS 350.057(3) or 350.060(1) as provided for  
 6 in KRS 350.053.

7 (3) Moneys in the fund may be used for the following purposes:

8 (a) To reclaim lands mined without a permit or authorization, as required by KRS  
 9 350.057 or 350.060(1), and not eligible for the abandoned mine lands  
 10 reclamation fund; and

11 (b) To defray all expenses associated with the seizure, storing, and sale of  
 12 forfeited property pursuant to KRS 350.053.

13 (4) Moneys contained in the illegal mining and conveyance reclamation fund shall be  
 14 deemed a trust and agency account and shall not lapse.

15 (5) The cabinet shall have access to and control of the moneys held in the illegal mining  
 16 and conveyance reclamation fund, but shall expend the moneys only for the  
 17 purposes set forth in subsection (3) of this section.

18 ➔Section 1878. KRS 350.057 is amended to read as follows:

19 (1) The secretary of the Energy and Environment~~[Environmental and Public~~  
 20 ~~Protection]~~ Cabinet shall promulgate regulations for the permitting and performance  
 21 of coal exploration operations which substantially disturb the natural land surface.  
 22 The regulations shall include at a minimum provisions for giving notice of intention  
 23 to explore including a description of the area to be explored and the period of  
 24 supposed exploration and provisions for reclamation, as required by this chapter, of  
 25 all land disturbed in the exploration.

26 (2) Any requirements of public access to records set forth in the Kentucky Revised  
 27 Statutes to the contrary notwithstanding, the secretary shall order that confidential

trade secrets or privileged commercial or financial information in the possession of the cabinet or pursuant to a coal exploration permit remain confidential.

(3) (a) No person or operator shall remove more than twenty-five (25) tons of coal by coal exploration operations without first obtaining a coal exploration permit from the cabinet.

(b) No person or operator conducting coal exploration operations in which more than twenty-five (25) tons of coal are removed shall knowingly and willfully receive, transport, sell, convey, exchange, transfer, trade, donate, deliver, or otherwise convert to a commercial use any coal extracted during the course of the operations, except with the prior written approval of the cabinet for the purpose of testing or determining the properties of the coal.

(4) All persons or operators conducting operations pursuant to this section shall be subject to the applicable provisions of KRS 350.990.

➔Section 1879. KRS 350.139 is amended to read as follows:

(1) All prior enactments of this General Assembly to the contrary notwithstanding, all funds received by the Energy and Environment~~Environmental and Public Protection~~ Cabinet through the payment of fees and civil penalties shall be deposited in the State Treasury to the credit of the general fund except as provided in KRS 350.990(1). All funds from the forfeiture of bonds shall be placed in the State Treasury in an interest-bearing account and credited to a special agency account. The interest shall become a supplemental fund and may be used to supplement forfeited bonds which are inadequate to complete the reclamation plan. Except as provided in KRS 350.131(1), forfeited bond funds shall be expended upon the lands for which the bond was given. The interest may be expended upon lands other than those for which the bond was given. No more than twenty-five percent (25%) of the supplemental fund may be expended upon any single site, unless a larger expenditure is necessary to abate an imminent danger to public



1 health or safety.

- 2 (2) The State Treasurer shall on or before August 1 of each year transfer thirty-three  
3 and one-third percent (33-1/3%) of all funds paid during the preceding fiscal year as  
4 fees for the issuance of any permit for surface coal mining operations to the fiscal  
5 courts of the county in which the permitted operation is located for the general  
6 purposes of that fiscal court.

7 ➔Section 1880. KRS 350.151 is amended to read as follows:

- 8 (1) The *Energy and Environment*~~Environmental and Public Protection~~ Cabinet shall  
9 promulgate permanent program administrative regulations for the mining and  
10 reclamation of land disturbed or removed by operations resulting from or incident to  
11 underground coal mining. The regulations shall recognize the distinct differences  
12 between underground mining and strip mining of coal, shall be promulgated  
13 pursuant to this chapter, and shall be enforced as provided in KRS 350.130 and  
14 350.990. Those activities may include, but not be limited to, the construction of new  
15 roads or the improvement or use of existing roads to gain access to the site of the  
16 activities and all lands affected by haulage, excavations, workings, impoundments,  
17 dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden  
18 piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage  
19 areas, processing areas, shipping areas and other areas upon which are sited  
20 structures, facilities, or other property or materials on the surface, but the  
21 regulations shall not be more stringent than those applied to strip mining of coal.
- 22 (2) The permit applicant shall file with the cabinet a reclamation bond payable to the  
23 Commonwealth of Kentucky with surety satisfactory to the cabinet in the sum to be  
24 determined by the cabinet for each acre or fraction thereof of the area of land  
25 affected, with a minimum bond of ten thousand dollars (\$10,000) conditioned upon  
26 the faithful performance of the requirements set forth in this section and of the  
27 administrative regulations of the cabinet. The cabinet shall forfeit the entire amount

1 of the bond for the permit area or increment in the event of forfeiture. The cabinet  
 2 shall accept, in lieu of the surety provided in this subsection, the deposit by the  
 3 operator of United States government securities, cash or its equivalent in a sum  
 4 equal to the principal amount of the required bond, or a self-bond pursuant to  
 5 administrative regulations promulgated by the cabinet.

- 6 (3) In order to protect the stability of the land, the cabinet shall suspend underground  
 7 mining activities under urbanized areas, and adjacent to industrial or commercial  
 8 buildings, major impoundments, or permanent streams, if the cabinet finds  
 9 imminent danger to inhabitants of the urbanized areas.

10 ➔Section 1881. KRS 350.152 is amended to read as follows:

- 11 (1) The Commonwealth, acting by and through its Energy and  
 12 Environment~~[Environmental and Public Protection]~~ Cabinet, shall have the power  
 13 to acquire, either by negotiation or by exercise of the power of eminent domain,  
 14 land which has been affected or disturbed by strip or auger mining, or by other  
 15 surface coal mining operations which consists of orphan banks or unreclaimed spoil  
 16 piles.

- 17 (2) Prior to acquiring any land pursuant to KRS 350.152 to 350.163 and KRS 350.240,  
 18 the Energy and Environment~~[Environmental and Public Protection]~~ Cabinet shall  
 19 extend to the owners thereof an opportunity to backfill, grade, plant, and do other  
 20 acts of restoration thereon to the same extent and within the same time limits as  
 21 prescribed by this chapter and regulations adopted pursuant thereto. If the owner or  
 22 owners agree in writing to perform such restoration and, weather permitting, start  
 23 such restoration within a period of thirty (30) days, the land shall not be acquired by  
 24 the Commonwealth.

- 25 (3) The Energy and Environment~~[Environmental and Public Protection]~~ Cabinet shall  
 26 attempt to purchase any land which it has determined should be acquired for the  
 27 purpose of restoration and which the owners have not agreed to restore as provided

1 in subsection (2) above. In any case where the cabinet and the owners of the land  
 2 are unable to agree upon the amount to be paid for the land, the cabinet may  
 3 exercise the power of eminent domain against such land by filing a condemnation  
 4 suit under the procedure of the Eminent Domain Act of Kentucky.

- 5 (4) The purchase price, in the case of a negotiated acquisition, or the damages as finally  
 6 determined, in the case of acquisition by condemnation, and the necessary expenses  
 7 incidental thereto, shall be paid from appropriations made by the General Assembly  
 8 for such purposes and appropriations to which federal funds made available for such  
 9 purposes have been credited.

10 ➔Section 1882. KRS 350.240 is amended to read as follows:

11 The **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet may adopt  
 12 in the manner provided in subsection (17) of KRS 224.10-100 and subsections (5) and (6)  
 13 of KRS 224.01-110 reasonable regulations for the reclamation of land disturbed or  
 14 removed in the mining of clay. Such regulations shall encourage water impoundments  
 15 and shall follow the standards established in Article III of the Interstate Mining Compact.  
 16 The cabinet shall have the authority to adopt such regulations prior to the effective date of  
 17 the Interstate Mining Compact and irrespective of whether the state becomes a member or  
 18 withdraws from membership in the Interstate Mining Compact.

19 ➔Section 1883. KRS 350.255 is amended to read as follows:

20 Any person may petition the secretary of the **Energy and Environment**~~[Environmental~~  
 21 ~~and Public Protection]~~ Cabinet to initiate a proceeding for the issuance, amendment, or  
 22 repeal of any regulation under this chapter.

- 23 (1) Notice and an opportunity shall be provided for the petitioner and any person  
 24 wishing to participate to be heard at a public hearing within thirty (30) days  
 25 following the filing of the petition on the facts, technical justification, and law  
 26 alleged in the petition.

- 27 (2) The secretary shall render a final order in writing within thirty (30) days after the

1 hearing granting or denying the petition on grounds that there is a reasonable basis  
 2 for the petitioned rule change, or is not, or that it is required or prohibited by law  
 3 and setting forth the reasons for the decision.

4 (3) The secretary shall initiate a rulemaking proceeding pursuant to KRS Chapter 13A  
 5 within thirty (30) days after a petition is granted proposing the issuance,  
 6 amendment, or repeal of the petitioned regulations in conformity with the final  
 7 order.

8 (4) Any participant in the petition proceedings may seek review in the Circuit Court of  
 9 Franklin County of a final order of the secretary denying all or any portion of the  
 10 action requested in a petition.

11 ➔Section 1884. KRS 350.260 is amended to read as follows:

12 There is hereby created a Small Coal Operators Advisory Council which shall report  
 13 directly to the secretary of the Governor's Executive Cabinet. The council shall advise on  
 14 matters affecting coal production and utilization including coal market development,  
 15 transportation, and storage problems. The council shall have the function of coordinating  
 16 and improving the working relationships between those state agencies administering  
 17 programs which regulate, serve, or aid small coal mine operators. The council shall  
 18 consist of fifteen (15) members. Ten (10) of those members shall be appointed by the  
 19 Governor. Seven (7) of the ten (10) members shall be full-time operators producing three  
 20 hundred thousand (300,000) or fewer tons of coal per year. Three (3) of the ten (10)  
 21 appointees shall be with backgrounds in one (1) or more of the following areas:  
 22 transportation, marketing, mining education, and mining engineering. The secretary of the  
 23 Energy and Environment~~Environmental and Public Protection~~ Cabinet, the  
 24 commissioners of the Department of Agriculture and the Department for Natural  
 25 Resources, and the special assistant to the Governor for coal and energy policy shall be ex  
 26 officio members. Each individual appointment shall be for a four (4) year term which  
 27 shall begin on July 15, 1984. Members may serve successive terms if reappointed.

Vacancies shall be filled in a manner consistent with the provisions for initial appointments. At the first meeting held on or after July 1 of each year, a chairman shall be elected by and from the membership. The council shall meet at least quarterly during each year and may meet more often at the call of the chairman. The council shall be attached to the Energy and Environment~~Environmental and Public Protection~~ Cabinet for administrative purposes. Council members shall be eligible for reimbursement by the cabinet for actual expenses directly related to serving on the council.

➔Section 1885. KRS 350.275 is amended to read as follows:

(1) The General Assembly finds that:

(a) The backstowing of coal processing and coal underground development waste is a disposal method which, under appropriate conditions, is authorized under state and federal coal mining laws;

(b) The state Division of Water and Department for Natural Resources, United States Environmental Protection Agency, and United States Mine Safety and Health Administration each have responsibilities under different state and federal laws relative to any proposal to backstow or reinject coal processing and coal underground development waste; and

(c) The maximization of coordination of agency review of such a proposal is in the best interest of each agency, the proponent, and the public-at-large.

(2) It is the intent of the General Assembly that the Energy and Environment~~Environmental and Public Protection~~ Cabinet negotiate improved coordination among state and federal agencies in the review of proposals for backstowing or reinjection of coal processing and coal underground development waste, consistent with all requirements of KRS Chapters 224 and 350 and other state and federal laws relating to such proposals.

➔Section 1886. KRS 350.310 is amended to read as follows:

(1) The "Mining Council," hereinafter called "the council," is hereby established in the

1 office of the Governor. The council shall be the advisory body referred to in Article  
 2 V(a) of the Interstate Mining Compact. No member of the council shall receive any  
 3 compensation on account of his service thereon, but any such member shall be  
 4 entitled to reimbursement for expenses actually incurred by him in connection with  
 5 his possible service as the Governor's alternate on the Interstate Mining  
 6 Commission.

7 (2) The council shall be composed of eight (8) members: one (1) of whom shall be the  
 8 Lieutenant Governor; three (3) of whom shall be representatives of mining  
 9 industries; two (2) of whom shall be representatives of nongovernmental  
 10 conservation interests; the commissioner for environmental protection and the  
 11 secretary of the Energy and Environment~~[Environmental and Public Protection]~~  
 12 Cabinet.

13 (3) The members of the council representing mining industries and nongovernmental  
 14 conservation interests shall be appointed by the Governor. The term of office of  
 15 such members shall be for four (4) years concurrent with that of the Governor or  
 16 until their successor has been qualified.

17 ➔Section 1887. KRS 350.320 is amended to read as follows:

18 In accordance with Article V(i) of the compact, the commission shall file copies of its  
 19 bylaws and any amendments thereto with the Energy and Environment~~[Environmental~~  
 20 ~~and Public Protection]~~ Cabinet.

21 ➔Section 1888. KRS 350.425 is amended to read as follows:

22 The permittee, operator, or other person shall design, locate, construct, operate, maintain,  
 23 enlarge, modify, and remove or abandon, in accordance with the standards and criteria  
 24 developed pursuant to subsection (f) of Section 515 of Public Law 95-87, "Surface  
 25 Mining Control and Reclamation Act of 1977," all existing and new coal mine waste piles  
 26 consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid  
 27 wastes, and used either temporarily or permanently as dams or embankments. The Energy

1 ~~and Environment~~~~[Environmental and Public Protection]~~ Cabinet through this chapter  
 2 shall have exclusive jurisdiction over KRS Chapter 151 concerning the regulation of  
 3 dams, levees, embankments, dikes, bridges, fills, or other obstructions across or along any  
 4 stream or in the floodway of any stream, which structures or obstructions are permitted  
 5 under this chapter.

6 ➔Section 1889. KRS 350.465 is amended to read as follows:

7 (1) The provisions of this section and regulations promulgated pursuant thereto, except  
 8 with regard to the mining of clay, limestone, sand, gravel, fluorspar, stone, and rock  
 9 asphalt, shall apply to the regulation of all surface coal mining and reclamation  
 10 operations in the Commonwealth in the event that the Commonwealth receives  
 11 from the United States Department of Interior and pursuant to the Surface Mining  
 12 Control and Reclamation Act of 1977, PL 95-87, approval of a permanent state  
 13 regulatory program, and the Commonwealth has promulgated regulations pursuant  
 14 to this section.

15 (2) The ~~Energy and Environment~~~~[Environmental and Public Protection]~~ Cabinet is  
 16 hereby authorized and directed to prepare, develop and promulgate a comprehensive  
 17 permanent regulatory program for the implementation of the Surface Mining  
 18 Control and Reclamation Act of 1977, PL 95-87, for the purpose of accepting and  
 19 administering primary enforcement responsibilities pursuant to that act. The  
 20 implementation of this section shall contain procedures similar to the Surface  
 21 Mining Control and Reclamation Act of 1977, PL 95-87, and shall require surface  
 22 coal mining operation performance standards no more stringent than provided for in  
 23 that act. Nothing in this section shall be construed to empower the cabinet to adopt  
 24 a regulatory program in conflict with the policy and purposes of the Surface Mining  
 25 Control and Reclamation Act of 1977, PL 95-87. To that end, the ~~Energy and~~  
 26 ~~Environment~~~~[Environmental and Public Protection]~~ Cabinet shall include in its  
 27 permanent regulatory program:

- 1 (a) Environmental protection performance standards to prevent or minimize the  
2 adverse environmental effects of surface coal mining and reclamation  
3 operations on the land and water resources of the Commonwealth.
- 4 (b) A procedure for designating as being unsuitable for mining certain lands  
5 because of their topographical, geological, hydrological, climatological,  
6 biological, or chemical characteristics or historical, cultural, scientific, or  
7 aesthetic values.
- 8 (c) Procedures and regulations for the allowance of those persons having an  
9 interest which is or may be adversely affected to have the opportunity to be  
10 heard at every significant or critical part of the administrative and judicial  
11 process, including, but not limited to, the permit review and issuance process,  
12 the general enforcement process and hearings incident thereto, and the  
13 rulemaking procedures conducted by the cabinet; and procedures and  
14 regulations for persons having a valid legal interest which is or may be  
15 adversely affected by the setting, release, and inspection of bonds to have an  
16 opportunity to be heard at every significant or critical part of the  
17 administrative and judicial process relating to bonds. The regulations shall  
18 provide reasonable procedures for notice and an opportunity to be heard,  
19 access to minesites, access to records, and other reasonable procedures to  
20 accomplish the purposes of this chapter.
- 21 (d) Procedures for the administrative and judicial review of all actions of the  
22 cabinet to administer and enforce the provisions of this chapter, including the  
23 award of costs and expenses, including attorney's fees and expert witness fees,  
24 by the cabinet or the court.
- 25 (e) Plans and procedures for the reclamation and restoration of land and water  
26 resources affected by mining which have been abandoned or inadequately  
27 reclaimed to the standards imposed by this section and for which no bond is



1 held or legal obligation to reclaim continues. The plan shall include provisions  
2 for the imposition of liens for necessary reclamation expenditures made on  
3 private property.

- 4 (f) Procedures for the assumption of the small operator assistance program  
5 pursuant to the Surface Mining Control and Reclamation Act of 1977, PL 95-  
6 87. The cabinet shall assume and implement that program and apply for and  
7 administer funds as may be provided pursuant to that act and such state funds  
8 as may be provided for the program.

- 9 (3) In addition to any other authority, power, and duty vested in it by law, the cabinet  
10 shall have and exercise broad authority, power, and duty to:

- 11 (a) Require those persons who wish to engage in surface coal mining and  
12 reclamation operations to submit application for a permit from the cabinet to  
13 conduct the operations, and to include in that application all information  
14 required by the cabinet pertaining to that operation.

- 15 (b) Issue, deny, or modify under such conditions as the cabinet may prescribe,  
16 permits to conduct surface coal mining and reclamation operations within the  
17 Commonwealth.

- 18 (c) Enter and inspect any permitted surface coal mining and reclamation  
19 operation or any known or suspected unpermitted mining operation for the  
20 purpose of ascertaining compliance with any provision of this chapter or of  
21 the permit.

- 22 (d) Order the cessation of mining activities, and if necessary impose affirmative  
23 abatement obligations, upon the permittee, operator, or person when, upon  
24 inspection, the cabinet determines that this section or any permit condition is  
25 being or has been violated so as to constitute an imminent and inordinate peril  
26 to the welfare of the Commonwealth.

- 27 (e) Order a person, permittee, or an operator to comply with the requirements of

1           this section or his permit if inspection reveals a violation of the conditions of  
2           his permit or of any provision of this section.

3           (f) Order a permittee to appear and show cause why his permit should not be  
4           suspended or revoked and his bond forfeited if the cabinet determines that the  
5           permittee or operator or the permitted operation has a pattern of violations of  
6           this section or permit conditions, and has willfully violated this section or  
7           permit conditions or a pattern of violations exists and that the violations are  
8           caused by the operator's or permittee's unwarranted failure to comply with this  
9           section or permit conditions.

10          (g) Require, increase, release, or decrease, under such conditions as the cabinet  
11          may prescribe, reclamation performance bonds and cause the forfeiture and  
12          collection of those bonds where the permittee has abandoned the operation or  
13          for which the permit under which the bond was given has been revoked or has  
14          expired without the required reclamation.

15          (h) To administratively impose, in lieu of those civil penalties provided for in  
16          KRS 350.990, civil penalties of up to five thousand dollars (\$5,000) per day  
17          for violations of permit conditions, this section, or any orders of the cabinet  
18          and enforce the administrative assessment of the penalties by initiating civil  
19          action in the Franklin Circuit Court or in any court having jurisdiction of the  
20          defendant.

21          (i) Conduct hearings and make investigations of any matter relating to the  
22          regulation of surface coal mining and reclamation operations, and provide for  
23          the assessment and payment of civil penalties including the placement of  
24          proposed civil penalty assessments into an escrow account prior to a contest  
25          on the amount of the assessment, consistent with the process of law.

26          (j) Provide for variances or exceptions consistent with KRS 350.450 from or in  
27          addition to mining performance standards, recognizing the specific

characteristics inherent in:

1. Steep slope mining;
2. Mountaintop removal;
3. Relatively low acreage disturbance or annual coal production;
4. Prime farmland mining as defined by the United States Department of Agriculture, and to provide for other variances where land uses and watersheds will be improved; and
5. Postmining uses different from and as beneficial as the premining uses.

(k) Receive and expend funds or aid from whatever source to accomplish the purposes of this chapter.

(l) Propose and promulgate regulations to accomplish the purposes of this section.

(4) The cabinet shall not promulgate regulations which are inconsistent with the Surface Mining Control and Reclamation Act of 1977, PL 95-87.

(5) Any person who violates a provision of this section or the regulations promulgated pursuant thereto shall be subject to those penalties and remedies set forth in KRS 350.990 except as provided for in subsection (3)(h) of this section.

→ Section 1890. KRS 350.475 is amended to read as follows:

(1) The **Energy and Environment**~~Environmental and Public Protection~~ Cabinet is directed to promulgate regulations which specifically address what liability surface mining permittees shall have to reclaim permit areas on which parties or forces not controlled by the permittee have disturbed the reclamation previously performed by the permittee. Such parties or forces not controlled by the permittee shall include, without limitation, acts of God, oil and gas operations, loggers, recreational vehicles, and trespassers.

(2) The **Energy and Environment**~~Environmental and Public Protection~~ Cabinet is also directed to promulgate regulations which specifically set forth the procedure

1 for transferring liability for reclamation of a surface mining permit to a party who  
 2 will make a post mining use of the permit area.

3 ➔ Section 1891. KRS 350.550 is amended to read as follows:

4 (1) There is hereby created within the Commonwealth of Kentucky an Abandoned  
 5 Mine Lands Program, to be administered within the Energy and  
 6 Environment~~[Environmental and Public Protection]~~ Cabinet. The secretary of the  
 7 Energy and Environment~~[Environmental and Public Protection]~~ Cabinet may  
 8 promulgate regulations necessary to implement this program. The provisions of  
 9 KRS 350.150, 350.152, 350.154, 350.156(1) and (2), 350.158, 350.161, and  
 10 350.163 shall not be applicable to this program.

11 (2) The Finance and Administration Cabinet is hereby directed to establish a fund to be  
 12 known as the abandoned mine reclamation fund (hereinafter referred to as the  
 13 "fund").

14 (3) The fund shall consist of amounts deposited in the fund from time to time,  
 15 including but not limited to:

16 (a) The reclamation fees levied pursuant to Section 402 of P.L. 95-87 and  
 17 allocated to the Commonwealth of Kentucky;

18 (b) Any income derived from or any user charge imposed on or for land reclaimed  
 19 pursuant to the Abandoned Mine Lands Program after the expenses of the  
 20 program have been deducted;

21 (c) Donations by persons, corporations, associations, governmental entities, and  
 22 foundations for the purposes of the Abandoned Mine Lands Program;

23 (d) Interest credited to the fund pursuant to Section 401(e) of P.L. 95-87 and  
 24 allocated to the Commonwealth of Kentucky; and

25 (e) All other moneys as provided for consistent with this chapter.

26 (4) Moneys in the fund may be used for the following purposes:

27 (a) Reclamation and restoration of land and water resources adversely affected by

1 past coal mining, including but not limited to reclamation and restoration of  
 2 abandoned surface mine areas, abandoned coal processing areas, and  
 3 abandoned coal refuse disposal areas; sealing and filling of abandoned deep  
 4 mine entries and voids; planting of land adversely affected by past coal mining  
 5 to prevent erosion and sedimentation; prevention, abatement, treatment, and  
 6 control of water pollution created by coal mine drainage, including restoration  
 7 of stream beds, and construction and operation of water treatment plants;  
 8 prevention, abatement, and control of burning coal refuse disposal areas and  
 9 burning coal in situ; and prevention, abatement, and control of coal mine  
 10 subsidence;

11 (b) Acquisition and filling of voids and sealing of tunnels, shafts, and entryways;

12 (c) Acquisition of land as provided for in this chapter;

13 (d) Restoration, reclamation, abatement, control, or prevention of adverse effects  
 14 of coal mining which constitute an emergency as provided for in this program;

15 (e) Administrative expenses of the program to accomplish the purposes of this  
 16 program;

17 (f) For the purposes of Section 507(c) of P.L. 95-87; and

18 (g) All other necessary expenses to accomplish the purposes of this program.

19 ➔Section 1892. KRS 350.565 is amended to read as follows:

20 The **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet shall have  
 21 the authority to prepare and submit to the Secretary, United States Department of the  
 22 Interior, reclamation plans, annual projects, applications for federal support, and any  
 23 other reports or plans which are provided for or required pursuant to Title IV of the  
 24 Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87).

25 ➔Section 1893. KRS 350.570 is amended to read as follows:

26 (1) If the cabinet makes a finding of fact pursuant to the Abandoned Mine Lands  
 27 Program that:

- 1 (a) Land or water resources have been adversely affected by past coal mining
- 2 practices; and
- 3 (b) The adverse effects are at a stage where, in the public interest, action to
- 4 restore, reclaim, abate, control, or prevent should be taken; and
- 5 (c) The owners of the land or water resources where entry must be made to
- 6 restore, reclaim, abate, control, or prevent the adverse effects of past coal
- 7 mining practices are not known or readily available; or
- 8 (d) The owners will not give permission for the United States, the
- 9 Commonwealth, political subdivisions, or their agents, employees, or
- 10 contractors to enter upon such property to restore, reclaim, abate, control, or
- 11 prevent the adverse effects of past coal mining practices;

12 then, upon giving notice by mail to the owners if known, or if not known, by  
 13 posting notice upon the premises and advertising once in a newspaper of general  
 14 circulation in the municipality or county in which the land lies, the cabinet and its  
 15 authorized representatives, agents, and contractors shall have the right to enter upon  
 16 the property adversely affected by past coal mining practices, and any other property  
 17 to have access to such property to do all things necessary or expedient to restore,  
 18 reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed  
 19 as an exercise of the police power for the protection of public health, safety, and  
 20 general welfare and shall not be construed as an act of condemnation of property  
 21 nor of trespass thereon. The moneys expended for such work and the benefits  
 22 accruing to any such premises so entered upon shall be chargeable against such land  
 23 and shall mitigate or offset any claim in or any action brought by any owner of any  
 24 interest in such premises for any alleged damages by virtue of such entry: provided,  
 25 however, that this provision is not intended to create new rights of action or  
 26 eliminate existing immunities.

- 27 (2) The cabinet and its authorized representatives, agents, and contractors shall have the

1 right to enter upon any property for the purpose of conducting studies or exploratory  
2 work to determine the existence of adverse effects of past coal mining practices and  
3 to determine the feasibility of restoration, reclamation, abatement, control, or  
4 prevention of such adverse effects. Such entry shall be construed as an exercise of  
5 the police power for the protection of public health, safety, and general welfare, and  
6 shall not be construed as an act of condemnation of property nor trespass thereon.

7 (3) The Commonwealth shall have the power to acquire, by purchase, donation, devise,  
8 or condemnation, any land which is adversely affected by past coal mining practices  
9 if acquisition of such land is necessary for successful reclamation and that:

10 (a) The acquired land, after restoration, reclamation, abatement, control, or  
11 prevention of the adverse effects of past coal mining practices, will serve  
12 recreation and historic purposes, conservation and reclamation purposes, or  
13 provide open space benefits; or

14 (b) Permanent facilities such as a treatment plant or a relocated stream channel  
15 will be constructed on the land for the restoration, reclamation, abatement,  
16 control, or prevention of the adverse effects of past coal mining practices; or

17 (c) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve  
18 the purposes of this chapter or that public ownership is desirable to meet  
19 emergency situations and prevent recurrences of the adverse effects of past  
20 coal mining practices.

21 (4) Title to all lands acquired pursuant to this section shall be in the name of the  
22 Commonwealth. The price paid for the land acquired under this section shall reflect  
23 the market value of the land as adversely affected by past coal mining practices. The  
24 Commonwealth may exercise the power of eminent domain against such land by  
25 filing a condemnation suit under the procedure of the Eminent Domain Act of  
26 Kentucky. Provided, that when the Commonwealth acquires land adversely affected  
27 by past coal mining practices pursuant to the Abandoned Mine Lands Program and

1 when such abandoned mine reclamation fund moneys are less than the purchase  
2 price, the Commonwealth shall be authorized to use whatever funds are available  
3 pursuant to KRS 350.156(3).

4 (5) The *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet may  
5 receive any federal, state, or other funds for the purpose of reclaiming lands affected  
6 by past coal mining practices, including federal funds made available to it pursuant  
7 to Title IV of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-  
8 87). The cabinet may avail itself of any services which may be provided by other  
9 state agencies or the federal government, and may compensate them for such  
10 services.

11 (6) The cabinet shall have the power to backfill, grade, revegetate, and perform other  
12 acts of restoration and reclamation on lands acquired pursuant to this section. The  
13 cabinet may cause the reclamation work to be done by its own employees or by  
14 employees of other governmental agencies or soil conservation districts, or through  
15 contracts with qualified persons. Such contracts shall be awarded pursuant to  
16 regulations promulgated by the cabinet. The cabinet and any other agency and any  
17 contractor under a contract with the cabinet shall have the right of access to the land  
18 affected to carry out such reclamation.

19 (7) Where land acquired pursuant to this section is deemed to be suitable for industrial,  
20 commercial, residential, or recreational development, the Commonwealth shall have  
21 the power to sell such land by public sale under a system of competitive bidding, at  
22 not less than fair market value and under such regulations as may be promulgated to  
23 insure that such lands are put to proper use consistent with local and state land use  
24 plans, if any. The proceeds of any such sale shall be credited to the abandoned mine  
25 reclamation fund. The cabinet, when requested after appropriate public notice, shall  
26 hold a public hearing, with the appropriate notice, in the county or counties in  
27 which lands acquired pursuant to this section are located. The hearings shall be held



1 at a time which shall afford local citizens and governments the maximum  
2 opportunity to participate in the decision concerning the use or disposition of the  
3 lands after restoration, reclamation, abatement, control, or prevention of the adverse  
4 effects of past coal mining practices.

5 (8) In addition to the authority to acquire and reclaim land for the purposes set forth in  
6 subsection (3) of this section, the Commonwealth is given authority to use money in  
7 the fund to acquire land by purchase, donation, devise, or condemnation and to  
8 reclaim such land and to transfer it to any political subdivision of the  
9 Commonwealth or to any person, firm, association, or corporation, if such is an  
10 integral and necessary element of an economically feasible plan for a project to  
11 construct or rehabilitate housing for persons disabled as the result of employment in  
12 the mines or work incidental thereto, persons displaced by acquisition of land  
13 pursuant to this section, persons dislocated as the result of adverse effects of coal  
14 mining practices which constitute an emergency as provided in KRS 350.585, or  
15 persons dislocated as the result of natural disasters or catastrophic failures from any  
16 cause, or any related commercial, industrial, agricultural, recreational, or  
17 governmental use of facilities. Such activities shall be accomplished under such  
18 terms and conditions as the Commonwealth shall require, which may include  
19 transfers of land with or without monetary consideration. Provided, that to the  
20 extent that the consideration is below the fair market value of the land transferred,  
21 no portion of the difference between the fair market value and the consideration  
22 shall accrue as a profit to such persons, firm, association, or corporation. No part of  
23 the funds provided under the abandoned mine reclamation fund may be used to pay  
24 the actual construction costs of housing.

25 (9) All acquisitions and disposals of land or any interests therein pursuant to the  
26 authority granted by this section shall be governed by the applicable provisions of  
27 KRS Chapters 45A and 56.

➔Section 1894. KRS 350.600 is amended to read as follows:

- (1) The General Assembly finds that there has been a recent interest in the Commonwealth in the mining and processing of oil shale due to the critical need for fossil fuel which has developed in this country. The General Assembly further finds that the development of this fossil fuel could be of significant long-range benefit to the Commonwealth and to the United States of America, but that the unregulated extraction and processing of oil shale within the Commonwealth could cause soil erosion, water pollution, and the destruction of aesthetic and agricultural values. The General Assembly further finds that, in order to effectively regulate the extraction and processing of oil shale, the Energy and Environment~~Environmental and Public Protection~~ Cabinet shall conduct extensive research concerning the process, waste production, and potentially adverse environmental impacts of such recovery operations.
- (2) It is the intent of the General Assembly to provide such regulation and control of the mining and processing of oil shale as to minimize and prevent its adverse effects on the citizens and the environment of the Commonwealth. The General Assembly further finds that the Energy and Environment~~Environmental and Public Protection~~ Cabinet is the most competent agency to regulate the extraction and processing of oil shale due to its expertise in the handling of the surface mining of other minerals and in the regulation of other sources of air and water pollution.
- (3) The Energy and Environment~~Environmental and Public Protection~~ Cabinet shall file with the regulations compiler reasonable rules and regulations pertaining to oil shale mining operations, which shall include strip mining as defined by KRS 350.010, the surface effects of underground mining of oil shale, and the in situ mining of oil shale by June 30, 1981. No person shall engage in the commercial mining or processing of oil shale until such time as the cabinet promulgates rules and regulations to provide standards for such mining.

- 1 (4) In promulgating regulations pursuant to subsection (3) of this section, the secretary  
 2 shall make written finding that the regulations promulgated are based on sound  
 3 scientific and engineering data and are reasonably necessary to protect the people  
 4 and environment of the Commonwealth from the adverse effects of oil shale  
 5 extraction. The secretary shall promulgate regulations consistent with existing  
 6 standards for land, water, and air protection. The secretary may conduct a public  
 7 hearing on the subject of the cabinet's regulation of the extraction and processing of  
 8 oil shale for the purpose of collecting data and receiving public comments on this  
 9 issue. The hearing will be held at a time and place to be determined by the secretary  
 10 in accordance with the policy of the cabinet.
- 11 (5) Prior to the adoption of the regulations required by this section, any person may  
 12 conduct core drilling, experimentation, removal of samples, or a pilot and  
 13 demonstration project which involves the mining of not more than five (5) acres for  
 14 the production of oil shale in any one (1) county. Such core drilling,  
 15 experimentation, removal of samples, or pilot and demonstration project involving  
 16 the mining of not more than five (5) acres for the production of oil shale in any one  
 17 (1) county shall not be initiated until written notification of the intent to perform  
 18 such operations shall be filed at least fifteen (15) days prior to commencement of  
 19 such projects by registered mail by the mine operator with the secretary of the  
 20 Energy and Environment~~Environmental and Public Protection~~ Cabinet of the  
 21 Commonwealth of Kentucky and with the person(s) holding title to the surface of  
 22 the land to be utilized for such operations.
- 23 (6) The secretary of the Energy and Environment~~Environmental and Public~~  
 24 ~~Protection~~ Cabinet of the Commonwealth of Kentucky shall be granted the right to  
 25 monitor such core drilling, experimentation, removal of samples, or pilot and  
 26 demonstration project as it may deem necessary for the purpose of establishing  
 27 sound and reasonable scientific and engineering data upon which rules and

1 regulations pertaining to oil shale mining operations in the Commonwealth of  
2 Kentucky can be based.

3 ➔Section 1895. KRS 350.610 is amended to read as follows:

4 (1) The secretary of the Energy and Environment~~Environmental and Public~~  
5 ~~Protection~~ Cabinet is hereby authorized to establish a planning process enabling  
6 objective decisions based upon competent and scientifically sound data as to which,  
7 if any, lands of the Commonwealth are unsuitable for all or certain types of surface  
8 coal mining operations pursuant to the standards set forth in this chapter; provided,  
9 that any such designation shall not prevent coal or other mineral exploration of any  
10 area so designated.

11 (2) Upon petition and hearing pursuant to subsection (6) of this section, the secretary  
12 shall designate an area as unsuitable for all or certain types of surface coal mining  
13 operations, if the secretary determines that reclamation pursuant to this chapter is  
14 not technologically and economically feasible.

15 (3) Upon petition and hearing pursuant to subsection (6) of this section, a surface area  
16 may be designated unsuitable for certain types of surface coal mining operations if  
17 such operations will:

18 (a) Be incompatible with existing state and local land use plans; or

19 (b) Affect fragile or historic lands in which such operations could result in  
20 significant damage to important historic, cultural, scientific, and aesthetic  
21 values, and natural systems; or

22 (c) Affect renewable resource lands in which such operations could result in a  
23 substantial loss or reduction of long-range productivity of water supply or  
24 food or fiber products, and such lands to include aquifers and aquifer recharge  
25 areas; or

26 (d) Affect natural hazard lands in which such operations could substantially  
27 endanger life and property, such lands to include areas subject to frequent

1 flooding and areas of unstable geology.

2 (4) Determinations of the unsuitability of land for surface coal mining shall be  
3 integrated as closely as possible with present and future land use planning and  
4 regulation processes at any appropriate level of government, including but not  
5 limited to any valid exercise of authority of a municipality or county, acting  
6 independently or jointly, pursuant to KRS Chapter 100.

7 (5) The requirements of this section shall not apply to lands on which coal mining  
8 operations were being conducted on August 3, 1977, or under a permit issued  
9 pursuant to this chapter or where substantial legal and financial commitments in  
10 such operation were in existence prior to January 4, 1977.

11 (6) Other provisions of this chapter relating to hearings to the contrary notwithstanding,  
12 any person having an interest which is or may be adversely affected shall have the  
13 right to petition the cabinet to the extent such a petition would be consistent with  
14 subsections (2) and (3) of this section, to have a specific and well-defined area  
15 designated as unsuitable for surface coal mining operations, or to have such a  
16 designation terminated. Such a petition shall contain allegations of facts which shall  
17 be specific as to the petitioner's designated area, including a justification that the  
18 criteria alleged occur throughout and form a significant feature, and shall be based  
19 upon objective evidence which would tend to establish the allegations. The cabinet  
20 shall make a determination or finding whether the petition is complete, incomplete,  
21 or frivolous. Within ten (10) months after the receipt of the petition, the cabinet  
22 shall hold a public hearing in the locality of the affected area, after appropriate  
23 notice and publication of the date, time, and location of such hearing, pursuant to  
24 regulations promulgated by the cabinet to implement this section, provided that  
25 when a permit application is pending before the cabinet and such application  
26 involves an area in a designation petition, the cabinet shall hold the hearing on the  
27 petition within ninety (90) days of its receipt. After a person having an interest

which is or may be adversely affected has filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty (60) days after such a hearing, the cabinet shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all petitioners stipulate agreement prior to the requested hearing and withdraw their request, such hearing need not be held. Within thirty (30) days after receipt of an order, determination, finding, or decision by the cabinet or the secretary hereunder, any applicant, or any person with an interest which is or may be adversely affected and who is aggrieved by the order, determination, finding, or decision of the cabinet or secretary, may obtain judicial review thereof by appealing to the Circuit Court of Franklin County pursuant to the provisions of KRS 224.10-470.

(7) Prior to designating any land areas as unsuitable for surface coal mining operations, the cabinet shall prepare a detailed statement on:

- (a) The potential coal resources of the area;
- (b) The demand for coal resources;
- (c) The impact of such designation on the environment, the economy, and the supply of coal; and
- (d) The characteristics of the petition area including a justification that the criteria alleged occur throughout the petition area and form a significant feature.

(8) Subject to subsection (5) of this section, the cabinet shall not issue a permit to conduct surface coal mining and reclamation operations in contravention of any designation or any decision on any petition pursuant to subsection (6) of this section regarding any surface area designated unsuitable for mining; nor shall the cabinet issue a permit to conduct surface coal mining and reclamation operations in an area under study for such designation in an administrative proceeding already

1 commenced under subsection (6) of this section.

2 ➔Section 1896. KRS 350.990 is amended to read as follows:

- 3 (1) Any permittee, person, or operator who violates any of the provisions of this chapter  
4 or administrative regulations promulgated pursuant thereto or who fails to perform  
5 the duties imposed by these provisions, except the refusal or failure to obtain a  
6 permit or other authorization as provided in this chapter, or who violates any  
7 determination or order issued pursuant to the provisions of this chapter, may be  
8 liable to a civil penalty of not more than five thousand dollars (\$5,000) for the  
9 violation, and an additional civil penalty of not more than five thousand dollars  
10 (\$5,000) for each day during which the violation continues, and in addition, may be  
11 enjoined from continuing the violations provided in this section. Any permittee,  
12 operator, or person who fails to abate a violation noted in a notice of noncompliance  
13 or an order for immediate compliance and cessation within the time period  
14 prescribed for the abatement shall be assessed a civil penalty of not less than seven  
15 hundred fifty dollars (\$750) for each day during which the violation continues. Any  
16 person issued an order pursuant to KRS 350.130(4) shall be assessed a civil penalty  
17 of not more than five thousand dollars (\$5,000) for each violation cited in the  
18 underlying notice of noncompliance issued therewith. No separate civil penalty  
19 shall be assessed for the order issued pursuant to KRS 350.130(4). Each day of  
20 continuing violation may be deemed a separate violation for purposes of penalty  
21 assessment. The cabinet shall develop a method for calculating monetary penalties  
22 and shall promulgate it as an administrative regulation. The secretary or a  
23 designated representative, upon his or her own initiative or upon written request  
24 received within fifteen (15) days after the cabinet mails its proposed penalty  
25 assessment, may waive the use of the method for calculating monetary penalties if  
26 he or she determines that, taking into account exceptional factors present in the  
27 particular case, the penalty is demonstrably unjust. The basis for every waiver shall

1 be fully explained and documented in the records of the case. If the secretary or his  
 2 or her designated representative waives the use of the formula, he or she shall  
 3 determine the appropriate penalty upon consideration of the permittee's history of  
 4 previous violations at the particular surface coal mining operation, the seriousness  
 5 of the violation, whether the permittee was negligent, and the demonstrated good  
 6 faith of the permittee charged in attempting to achieve rapid compliance after  
 7 notification of the violation. The penalties shall be recoverable in an action brought  
 8 in the name of the Commonwealth of Kentucky by the cabinet~~cabinet's Office of~~  
 9 ~~Legal Services~~. The Franklin Circuit Court shall hold concurrent jurisdiction and  
 10 venue of all civil and injunctive actions instituted by the cabinet for the enforcement  
 11 of the provisions of this chapter or the orders and administrative regulations of the  
 12 cabinet promulgated pursuant thereto. All sums recovered shall be placed in the  
 13 State Treasury, except those moneys collected in excess of eight hundred thousand  
 14 dollars (\$800,000) in any fiscal year shall be deposited in the bond pool fund for  
 15 purposes set forth in KRS 350.595 and KRS 350.700 to 350.755 until the fund  
 16 reaches sixteen million dollars (\$16,000,000) or a higher amount as may be  
 17 established by the most recent actuarial study, after which excess money collected  
 18 shall be deposited fifty percent (50%) to the bond pool fund and fifty percent (50%)  
 19 to the supplemental fund established under KRS 350.139(1), and used for the  
 20 purposes of that section. If the bond pool fund falls below sixteen million dollars  
 21 (\$16,000,000) or a higher amount as may be established by the most recent actuarial  
 22 study, all excess moneys shall be deposited in the bond pool fund until that fund  
 23 reaches sixteen million dollars (\$16,000,000) or a higher amount as may be  
 24 established by the most recent actuarial study. All moneys previously deposited in  
 25 the abandoned mine land enhancement fund shall be redeposited in the bond pool  
 26 fund.

27 (2) Any person or operator who engages in surface coal mining operations without first



1       securing a permit, as provided in KRS 350.060, or any person who engages in coal  
2       exploration operations, exclusive of core drilling, without proper authorization, as  
3       required by the cabinet pursuant to KRS 350.057 or administrative regulations  
4       promulgated pursuant thereto, or any person or operator who engages in other  
5       mining operations, without proper authorization as required by this chapter or  
6       administrative regulations promulgated pursuant thereto, shall be liable to a civil  
7       penalty for damages to the Commonwealth of not less than five thousand dollars  
8       (\$5,000) nor more than twenty-five thousand dollars (\$25,000) and in addition, may  
9       be enjoined from continuing the violations. Each day shall constitute a separate  
10      violation. In addition to the foregoing penalties, any permittee, person, or operator  
11      who fails to abate a violation of KRS 350.060 or KRS 350.029 or KRS 350.057, as  
12      noted in a notice of noncompliance or an order for immediate compliance and  
13      cessation within the time period prescribed for the abatement, shall be assessed an  
14      additional civil penalty of not less than seven hundred fifty dollars (\$750) for each  
15      day during which the violation continues. However, the penalties provided in  
16      subsection (1) of this section shall apply in lieu of the penalties provided in this  
17      subsection where an operator or permittee through inadvertence has exceeded the  
18      boundaries or expiration date of the permit in effect at that time.

- 19   (3) The cabinet~~[cabinet's Office of Legal Services]~~ shall bring an action for the  
20      recovery of penalties and bring an action for a restraining order, temporary or  
21      permanent injunction, against any permittee, operator, or person violating or  
22      threatening to violate any of the provisions of this chapter or violating or  
23      threatening to violate any order or determination issued pursuant to the provisions  
24      of this chapter. The Franklin Circuit Court shall hold concurrent jurisdiction and  
25      venue of all civil and injunctive actions instituted by the cabinet for the enforcement  
26      of the provisions of this chapter or the orders and administrative regulations of the  
27      cabinet promulgated pursuant thereto.

- 1 (4) Any permittee, operator, or person who knowingly and willfully violates any of the  
2 provisions of this chapter, except as provided in subsection (5) of this section, or  
3 any determination or order issued pursuant to the sections of this chapter which  
4 have become final, shall be guilty of a Class A misdemeanor. Each day on which  
5 the violation occurs may constitute a separate offense.
- 6 (5) (a) Any person or operator who, in violation of KRS 350.060(1)(a) willfully and  
7 knowingly engages in surface coal mining operations without first obtaining a  
8 permit from the cabinet, or any person or operator who willfully and  
9 knowingly engages in coal exploration operations, exclusive of core drilling,  
10 without proper authorization, as required by the cabinet pursuant to KRS  
11 350.057 or administrative regulations promulgated pursuant thereto, or any  
12 person or operator who willfully and knowingly engages in other mining  
13 operations without proper authorization as required by this chapter or  
14 administrative regulations promulgated pursuant thereto, with the intent to  
15 violate the laws, shall be guilty of a Class D felony.
- 16 (b) Any person or operator who in violation of KRS 350.060(1)(b) willfully and  
17 knowingly receives, transports, sells, conveys, transfers, trades, exchanges,  
18 donates, purchases, delivers, or in any way derives benefit from coal removed  
19 from any surface mining operations conducted in violation of KRS  
20 350.060(1)(a) or 350.057 shall be guilty of a Class D felony.
- 21 (6) Any person who violates any of the provisions of KRS 350.600 or administrative  
22 regulations promulgated pursuant thereto shall be subject to civil penalties of not  
23 more than twenty-five thousand dollars (\$25,000). Each day of continuing violation  
24 shall be deemed a separate violation.
- 25 (7) Any permittee, operator, or person who knowingly makes any false statement,  
26 representation, or certification, or knowingly fails to make any statement,  
27 representation, or certification in any application, record, report, plan, or other

1 document filed or required to be maintained by the cabinet, shall upon conviction be  
2 guilty of a Class A misdemeanor.

3 (8) Except as permitted by law, any permittee, operator, or person who willfully and  
4 knowingly resists, prevents, impedes, or interferes with the secretary or other  
5 personnel of the cabinet in the performance of duties pursuant to this chapter shall  
6 be guilty of a Class A misdemeanor.

7 (9) When a corporate permittee violates any provision of this chapter or administrative  
8 regulation promulgated pursuant thereto or fails or refuses to comply with any final  
9 order issued by the secretary, any director, officer, or agent of the corporation who  
10 willfully and knowingly authorized, ordered, or carried out the violation, failure, or  
11 refusal shall be subject to the same civil penalties, fines, and imprisonment as may  
12 be imposed upon a person pursuant to this section.

13 (10) Upon notice by the secretary that any surety has failed to comply with the  
14 provisions of KRS 350.032(3), the commissioner~~executive director~~ of the  
15 Kentucky Department~~Office~~ of Insurance shall revoke the surety's certificate of  
16 authority to conduct insurance business within the Commonwealth of Kentucky.

17 (11) The cabinet, upon written request by any permittee, person, or operator subject to  
18 any penalty assessment under this section and pursuant to procedures, if any, set  
19 forth by administrative regulation and after consultation with the local county fiscal  
20 court, may allow as an alternative to the payment of any assessed penalty under this  
21 section the performance of in-kind reclamation, environmental rehabilitation, or  
22 similar action to correct environmental pollution. The in-kind work shall not  
23 substitute for those remedial measures mandated by the cabinet for the correction of  
24 any violations. The estimated cost of the in-kind work shall be greater than the  
25 penalty assessment. The cabinet's Division of Abandoned Mine Lands shall have  
26 the authority to approve proposed in-kind projects and to recommend projects to the  
27 cabinet, and shall determine whether the estimated cost of the in-kind work exceeds

1 the penalty assessment. For the purposes of this subsection, the cost of the in-kind  
2 work shall include only those expenditures for actual on-site reclamation or  
3 rehabilitation work, including direct equipment, personnel, and material cost, but  
4 excluding administrative overhead or transportation costs. Failure to perform the in-  
5 kind work as agreed upon by the person or operator subject to the penalty  
6 assessment shall reinstate the liability of the person, permittee, or operator for the  
7 full amount of the assessed penalty. The cabinet may prepare and promulgate  
8 administrative regulations as are necessary to implement and administer the  
9 provisions of this subsection.

10 ➔Section 1897. KRS 351.070 is amended to read as follows:

- 11 (1) The commissioner shall have full authority over the department and shall  
12 superintend and direct the activities of the mine inspectors and other personnel of  
13 the department. There is created within the Department for Natural Resources an  
14 Office of Mine Safety and Licensing.
- 15 (2) The secretary shall appoint an executive director to the Office of Mine Safety and  
16 Licensing in accordance with KRS 224.10-020(2) and prescribe his powers and  
17 duties.
- 18 (3) The commissioner may, whenever necessary, divide the coal fields of the state into  
19 as many inspection districts as necessary, so as to equalize as nearly as practicable  
20 the work of each inspector, and may assign to the inspectors their respective  
21 districts.
- 22 (4) The commissioner may, whenever he or she deems it necessary in the interest of  
23 efficient supervision of the mines, temporarily employ the services of additional  
24 mine inspectors or change inspectors from one (1) district to another.
- 25 (5) The commissioner shall superintend and direct the inspection of mines and cause to  
26 be investigated the character and quality of air in mines whenever conditions  
27 indicate the necessity of doing so.

- 1 (6) The commissioner shall collect statistics relating to coal mining in the state and  
2 make an annual report of the statistics.
- 3 (7) The commissioner shall see that maps, plans, projections, and proposed  
4 developments of all underground coal mines are made and filed in his office.
- 5 (8) The commissioner shall keep a properly indexed, permanent record of all  
6 inspections made by himself and the personnel of the department.
- 7 (9) The commissioner shall exercise general supervision over the training of officials  
8 and workmen in safety and first aid and mine rescue methods, and may conduct  
9 demonstrations in safety whenever he deems it advisable.
- 10 (10) The commissioner shall exercise general supervision over the dissemination of  
11 information among officials and employees concerning mine ventilation, mining  
12 methods, and mine accidents and their prevention, and shall assume full charge in  
13 the event of mine fire or explosion or other serious accident at any mine in the state.
- 14 (11) The commissioner may assist in the resumption of operations of any mine or gather  
15 data for the development of any coal seams that would be of any benefit to the state  
16 or create new employment.
- 17 (12) The commissioner may prescribe reasonable safety standards governing the use of  
18 explosives, and electrical and mechanical equipment in the operation of open-pit or  
19 surface mines.
- 20 (13) The secretary of the Energy and Environment~~Environmental and Public~~  
21 ~~Protection~~ Cabinet shall have the power and authority to promulgate, amend, or  
22 rescind any administrative regulations he or she deems necessary and suitable for  
23 the proper administration of this chapter. Administrative regulations may be  
24 promulgated, amended, or rescinded by the secretary only after public hearing or an  
25 opportunity to be heard thereon of which proper notice by publication pursuant to  
26 KRS Chapter 424, has been given. Administrative regulations so promulgated shall  
27 carry the full force and effect of law.

- 1 (14) The commissioner shall ascertain the cause or causes of any coal mining fatality and  
 2 any accidents involving serious physical injury and, within sixty (60) days of  
 3 completion of the investigation, shall report his or her findings and  
 4 recommendations to the Governor, the Mine Safety Review Commission, the  
 5 Mining Board, and the Legislative Research Commission. Accident interviews  
 6 conducted by the Office of Mine Safety and Licensing shall be closed proceedings.  
 7 The recommendations may include without being limited to the need to promulgate  
 8 or amend administrative regulations to prevent the recurrence of the conditions  
 9 causing the fatality. Effective January 1, 2009, the Office of Mine Safety and  
 10 Licensing shall appoint an existing full-time employee to act as a family liaison.  
 11 The family liaison shall have the responsibility during an accident investigation to  
 12 keep the families of miners informed of the progress and findings of the accident  
 13 investigation. The family liaison shall be trained in mining and in grief counseling.
- 14 (15) The commissioner shall assess civil monetary penalties against licensed facilities  
 15 for violations of laws in this chapter and KRS Chapter 352 pertaining to roof  
 16 control plans, mine seal construction plans, unsafe working conditions, and mine  
 17 ventilation plans that could lead to imminent danger or serious physical injury. The  
 18 Energy and Environment~~Environmental and Public Protection~~ Cabinet shall  
 19 promulgate administrative regulations within ninety (90) days of July 12, 2006,  
 20 providing for the manner and method of the assessment of the penalties and appeals  
 21 therefrom. In no event shall the civil penalty assessed pursuant to this subsection for  
 22 the violation exceed five thousand dollars (\$5,000). Nothing contained in this  
 23 subsection shall be construed to impair or contravene the authority granted under  
 24 KRS 351.025(2) for imposing penalties against licensed facilities.
- 25 ➔Section 1898. KRS 351.1041 is amended to read as follows:
- 26 (1) The Mine Safety Review Commission is created as an independent governmental  
 27 entity attached to the Energy and Environment~~Environmental and Public~~

1       ~~Protection~~] Cabinet, Office of the Secretary, for administrative purposes. The  
 2       commission shall:

3       (a) Conduct hearings and issue orders regarding a licensee, coal operation, or  
 4       other person involved in the mining of coal in accordance with KRS 351.194;

5       (b) Jointly with the department establish a process for the department's referral of  
 6       allegations of mine safety violations, allegations of unsafe working conditions,  
 7       violation of a miner's drug- and alcohol-free condition of certification, or  
 8       supervisory personnel's failure to immediately report a fatal accident or an  
 9       accident involving serious physical injury to the commission for adjudication;

10      (c) Make any recommendations to the department that it believes appropriate  
 11      upon its review, consideration, and analysis of:

12           1. All reports of coal mining fatalities and serious physical injuries  
 13           provided by the commissioner under KRS 351.070(14);

14           2. Any case in which a miner or a mine owner or operator, in the  
 15           professional opinion of the department has a history of significant and  
 16           substantial safety violations even though there has been no serious  
 17           physical injury or death resulting from the violations;

18           3. Any case in which a miner or a mine owner or operator has been  
 19           convicted of a criminal charge for a violation of a federal mine safety  
 20           standard or standards; and

21           4. Any case in which the Federal Mine Safety and Health Administration  
 22           has made a recommendation relating to certification of an individual  
 23           certified under this chapter.

24      (2) The Mine Safety Review Commission shall consist of three (3) members appointed  
 25      by the Governor subject to the consent of the Senate and the House of  
 26      Representatives in accordance with KRS 11.160. Of the members of the Mine  
 27      Safety Review Commission first appointed under this section, one (1) shall be

- 1 appointed for a term of one (1) year; one (1) shall be appointed for a term of two (2)  
 2 years; and one (1) shall be appointed for a term of three (3) years. After the initial  
 3 appointments, members of the board shall be appointed for terms of four (4) years.  
 4 A member may be reappointed at the expiration of his or her previous term.  
 5 Members shall continue to serve until a successor is appointed and qualified.
- 6 (3) The members of the Mine Safety Review Commission shall have the qualifications  
 7 required of Judges of the Court of Appeals, except for residence in a district, and  
 8 shall be subject to the same standards of conduct made applicable to a part-time  
 9 judge by the Rules of the Kentucky Supreme Court. The members shall receive the  
 10 per diem equivalent of the salary of a Judge of the Court of Appeals for each day  
 11 spent in conducting the business of the commission.
- 12 (4) The Governor shall designate a member of the Mine Safety Review Commission to  
 13 serve as chair and shall fill any vacancy in the office of chair.
- 14 (5) The Governor may remove any member for good cause, including violation of the  
 15 Code of Judicial Conduct and repeated failure to perform satisfactorily the specific  
 16 duties assigned in this chapter or KRS Chapter 352. The Governor may remove the  
 17 member only after furnishing him or her with a written copy of the charges against  
 18 that member and holding a public hearing if requested by the member.
- 19 (6) The commission shall meet on the call of the chair or a majority of the members of  
 20 the commission.
- 21 (7) The **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet shall  
 22 provide administrative services to the Mine Safety Review Commission. If the  
 23 commission deems it necessary to employ hearing officers to assist it, the **Energy**  
 24 **and Environment**~~[Environmental and Public Protection]~~ Cabinet shall employ  
 25 hearing officers to assist the commission in accordance with KRS Chapter 13B and  
 26 this chapter, notwithstanding the provisions of KRS 13B.030(2)(b).
- 27 (8) The commission may conduct hearings, compel the attendance of witnesses,



1 administer oaths, and conduct oversight activities as may be required to ensure the  
2 full implementation of its duties.

3 (9) The department shall provide the Mine Safety Review Commission with all  
4 information requested by the commission for the fulfillment of its responsibilities  
5 under this chapter and KRS Chapter 352.

6 (10) The secretary of the Energy and Environment~~Environmental and Public~~  
7 ~~Protection~~] Cabinet shall effectuate the hiring of any staff deemed necessary and  
8 affordable for the efficient operations of the Mine Safety Review Commission. This  
9 may include an executive director, general counsel, or other administrative support  
10 positions, to be appointed in accordance with KRS 12.010 and 12.050.

11 ➔Section 1899. KRS 351.1055 is amended to read as follows:

12 (1) There is hereby established a Mine Equipment Review Panel attached to the  
13 Department for Natural Resources in the Energy and Environment~~Environmental~~  
14 ~~and Public Protection~~] Cabinet.

15 (2) The Mine Equipment Review Panel shall be a permanent panel of recognized  
16 experts who shall review and make recommendations annually to the executive  
17 director of the Office of Mine Safety and Licensing and the Interim Joint  
18 Committee on Agriculture and Natural Resources regarding best available mine  
19 safety technologies, including but not limited to wireless tracking and  
20 communications devices for use by miners in underground mines. Subject to  
21 budgetary constraints and approval by the United States Mine Safety and Health  
22 Administration (MSHA), if there is no existing law to the contrary, the  
23 commissioner may implement the recommendations of the panel. Based on the  
24 recommendations provided by the panel, the executive director shall comprise a list  
25 of commercially available mine safety equipment, including wireless tracking and  
26 communications devices that may be approved for use by coal miners.

27 (3) The panel shall meet at the call of the chair. The chair of the panel shall be the

1 executive director of mine safety and licensing. Members of the panel shall serve  
2 without pay, but shall be entitled to reimbursement of travel-related expenses.

3 (4) The Mine Equipment Review Panel shall be composed of the following members,  
4 who shall be appointed by the commissioner not less than thirty (30) days after July  
5 12, 2006:

6 (a) One (1) member shall represent the National Institute of Occupational Safety  
7 and Health;

8 (b) One (1) member shall represent the federal Mine Safety and Health  
9 Administration;

10 (c) One (1) member shall represent the coal industry;

11 (d) One (1) member shall be appointed from the membership of the United Mine  
12 Workers of America and shall represent mine labor, preferably a member of a  
13 Kentucky mine rescue team;

14 (e) One (1) member shall represent the Department of Mining Engineering at the  
15 University of Kentucky; and

16 (f) One (1) member shall be the executive director of the Office of Mine Safety  
17 and Licensing.

18 (5) The Mine Equipment Review Panel shall provide initial recommendations to the  
19 executive director of the Office of Mine Safety and Licensing not more than one  
20 hundred twenty (120) days after the panel members have been appointed and the  
21 panel is duly constituted to conduct business. Periodically, the panel shall review  
22 and make recommendations to the executive director on changes to or innovations  
23 in mine safety equipment that could be deployed in coal mines.

24 ➔Section 1900. KRS 351.175 is amended to read as follows:

25 (1) The operation of a coal mine in Kentucky is a privilege granted by the  
26 Commonwealth of Kentucky to a licensee who satisfies the requirements of this  
27 section and demonstrates that the mine is or will be operated in a safe manner and in

- 1 accordance with the laws of this Commonwealth.
- 2 (2) Within forty-five (45) days after January 1, 1953, and of each year thereafter, the  
 3 owner, operator, lessee, or licensee of each mine shall procure from the department  
 4 a license to operate the mine, and the license shall not be transferable. Any owner,  
 5 operator, lessee, or licensee who assumes control of a mine, opens a new mine, or  
 6 reopens an abandoned mine during any calendar year shall procure a license before  
 7 mining operations are begun.
- 8 (3) The license shall be in printed form as the commissioner may prescribe and when  
 9 issued shall be kept posted at a conspicuous place near the main entrance of the  
 10 mine.
- 11 (4) Requests for a license shall be made to the department and shall be accompanied by  
 12 a United States postal money order or cashier's check drawn in favor of the State  
 13 Treasurer in an amount established by administrative regulations of a minimum of  
 14 one hundred dollars (\$100) and a maximum of fifteen hundred dollars (\$1,500). The  
 15 license shall be issued when the following are properly submitted to the  
 16 commissioner:
- 17 (a) The annual report of the licensee and the annual mine map required in KRS  
 18 351.170 and 352.450;
- 19 (b) A certification from the commissioner~~executive director~~ of the  
 20 Department~~Office~~ of Workers' Claims that the licensee has provided  
 21 positive proof of compliance with the provisions of KRS Chapter 342;
- 22 (c) A certification from the commissioner of the Department of Revenue that the  
 23 licensee is not a "delinquent taxpayer" as defined in KRS Chapter 131;
- 24 (d) Mine seal construction plan filed with the state and approved by MSHA;
- 25 (e) Roof control plan filed with the state and approved by MSHA;
- 26 (f) The ventilation plan required in KRS 352.020; and
- 27 (g) An approved emergency action plan required by KRS 352.640.

- 1 (5) The department shall immediately revoke any license if the department receives:
- 2 (a) Withdrawal of the certification of compliance with KRS Chapter 342 issued
- 3 by the commissioner~~[executive director]~~ of the Department~~[Office]~~ of
- 4 Workers' Claims; or
- 5 (b) Notice from the commissioner of the Department of Revenue that the licensee
- 6 is a "delinquent taxpayer" as defined in KRS Chapter 131.
- 7 (6) The commissioner, the executive director of the Office of Mine Safety and
- 8 Licensing, or the mine inspector shall have the authority to stop production or close
- 9 any mine whose operator fails to procure a license or fails to furnish a certification
- 10 of workers' compensation coverage as required under this section.
- 11 (7) The department shall be authorized to seek injunctive relief for any violation of this
- 12 section. Revocation of a license by the department shall be an administrative
- 13 function of the department. Appeals from revocation by the department shall be
- 14 brought in Franklin Circuit Court.
- 15 (8) A license which has been revoked under the "delinquent taxpayer" provision shall
- 16 not be reissued until a written tax clearance has been received from the
- 17 commissioner of revenue.
- 18 (9) No mine underlying a cemetery shall be licensed by the commissioner unless two-
- 19 thirds (2/3) of the governing body of that cemetery vote in approval of the
- 20 operation. The application for a license shall contain an affidavit setting forth the
- 21 approval of the cemetery's governing body. This subsection applies only to those
- 22 cemeteries with governing bodies.
- 23 ➔Section 1901. KRS 351.186 is amended to read as follows:
- 24 (1) Any employer who is also a licensee that has implemented a drug-free workplace
- 25 program certified by the Office of Mine Safety and Licensing shall be eligible to
- 26 obtain a credit on the licensee's premium for workers' compensation insurance.
- 27 (2) Each insurer authorized to write workers' compensation insurance policies shall

1 provide the credit on the workers' compensation premium to any employer who is  
 2 also a licensee for which the insurer has written a workers' compensation policy.

3 The credit on the workers' compensation premium shall not:

4 (a) Be available to those employers that are also licensees who do not maintain  
 5 their drug-free workplace program for the entire workers' compensation policy  
 6 period; or

7 (b) Apply to minimum premium policies.

8 (3) The Department~~{Office}~~ of Insurance shall approve workers' compensation rating  
 9 plans that give a credit on the premium for a certified drug-free workplace so long  
 10 as the credit is actuarially sound. The credit shall be at least five percent (5%)  
 11 unless the Department~~{Office}~~ of Insurance determines that five percent (5%) is  
 12 actuarially unsound.

13 (4) The credit on the workers' compensation premium may be applied by the insurer at  
 14 the final audit.

15 ➔Section 1902. KRS 351.330 is amended to read as follows:

16 (1) Blasting of explosives for use in the neighborhood of any public highway, stream of  
 17 water, dwelling house, public building, school, church, commercial or institutional  
 18 building, pipeline, or utility shall be done in accordance with the provisions of this  
 19 section, and rules and regulations promulgated by the department.

20 (2) Where necessary in a blasting operation, the department may require that the  
 21 operator submit a blasting plan to the department for approval.

22 (3) In all blasting operations, except as hereinafter otherwise provided, the maximum  
 23 peak particle velocity of the ground motion in any direction shall not exceed two (2)  
 24 inches per second at the immediate location of any dwelling house, public building,  
 25 school, church, commercial or institutional building, and the particle velocity at  
 26 such location immediately after a period of one (1) second following the peak  
 27 particle velocity produced by any charge shall not continuously exceed one-half

- 1 (1/2) inch per second.
- 2 (4) Blasting operations without instrumentation will be considered as being within the  
3 limits set forth in this subsection if such blasting operations are conducted in  
4 accordance with rules and regulations of the department establishing the maximum  
5 amount of explosives to be used in a single charge and in a single subcharge within  
6 specified distances from any location provided by subsection (1). No more than  
7 40,000 pounds of explosives may be used in any charge except with the approval of  
8 the commissioner. Regulations promulgated by the department pursuant to this  
9 subsection shall be in such terms that compliance therewith will assure compliance  
10 with the provisions of subsection (3).
- 11 (5) No two (2) consecutive subcharges containing the maximum permitted by the  
12 department pursuant to this subsection shall have a detonation time separated by  
13 less than eight (8) milliseconds, except that if the amount of explosive used in any  
14 subcharge is less than maximum permitted by the department pursuant to subsection  
15 (4), the time delay between detonation times may be decreased in the same ratio.
- 16 (6) Any blasting operation may be conducted without reference to any maximum  
17 amount or period provided by or pursuant to subsection (4) if the operator of such  
18 blasting operation demonstrates by instrumentation that maximum particle velocity  
19 of the ground motion in any direction does not exceed the limits provided in  
20 subsection (3).
- 21 (7) Instruments for determining particle velocity as set forth in this subsection shall be  
22 limited to such specific types of devices as shall have been expressly approved by  
23 the department and the commissioner or his duly authorized agent may enter upon  
24 any premises for the purpose of conducting or supervising any necessary  
25 instrumentations provided by KRS 351.315 to 351.375.
- 26 (8) When blasting operations are contemplated which would result in ground vibrations  
27 that would have a particle velocity in any direction in excess of 2 inches per second

- 1 at the immediate location of any dwelling house, public building, school, church,  
2 commercial or institutional building, blasting operations may proceed after  
3 receiving written consent from the property owner or owners affected.
- 4 (9) When blasting operations, other than those conducted at a fixed site as a part of any  
5 industry or business operated at such site, are to be conducted within the vicinity of  
6 a pipeline or public utility, the blaster or person in charge of the blasting operations  
7 shall take due precautionary measures for the protection of the pipeline or utility,  
8 and shall give adequate notice to the owner or his agent that such blasting  
9 operations are intended. The blaster shall be subject to regulations promulgated by  
10 the department concerning such a blasting operation.
- 11 (10) Blasting operations near streams shall be prohibited in all cases where the effect of  
12 the blasting is liable to change the course or channel of any stream without first  
13 obtaining a permit from the department which has been approved by the Division of  
14 Water in the Energy and Environment~~Environmental and Public Protection~~  
15 Cabinet.
- 16 (11) Blasting operations shall not be conducted within eight hundred (800) feet of any  
17 public highway, unless due precautionary measures are taken to safeguard the  
18 public.
- 19 (12) Mudcapping in blasting operations shall be permitted only where it would endanger  
20 the safety of the workers to drill the rock or material to be blasted. If mudcapping is  
21 necessary, no more than ten (10) pounds of explosives shall be used for each charge.
- 22 (13) When the use of detonating cord would cause severe air blast the department may  
23 cause all trunk lines to be covered by 5 to 6 inches of loose earth.
- 24 (14) In blasting operations, flying rocks shall not be allowed to fall greater than one-half  
25 (1/2) the distance between the blast and a dwelling house, public building, school,  
26 church, commercial or institutional building. Protective material shall be used to  
27 insure this limit.

- 1 (15) When a blast is about to be fired, ample warning shall be given to allow all persons  
 2 to retreat to a safe place, and care shall be taken to ascertain that all persons are in  
 3 the clear. Each operator shall follow a definite plan of warning signals that can be  
 4 clearly seen or heard by anyone in the blasting area. The operator shall inform all  
 5 employees at the operation as to the established procedure.
- 6 (16) No person shall use explosives in such manner that safety to persons or property is  
 7 threatened.
- 8 (17) The two (2)-inch-per-second maximum peak particle velocity as specified in  
 9 subsections (3) and (8) of this section shall be construed as the threshold below  
 10 which blasting damage is unlikely to occur. However, the department shall have the  
 11 authority to promulgate regulations requiring more restrictive levels of maximum  
 12 peak particle velocity when necessary to maintain consistency with federal statutes  
 13 or regulations.
- 14 ➔Section 1903. KRS 353.510 is amended to read as follows:
- 15 As used in KRS 353.500 to 353.720, unless the context otherwise requires:
- 16 (1) "Department" means the Department for Natural Resources~~[as defined in KRS~~  
 17 ~~351.010]~~;
- 18 (2) "Commissioner" means the commissioner of the Department for Natural Resources~~[~~  
 19 ~~as defined in KRS 351.010]~~;
- 20 (3) "Director" means the director of the Division of Oil and Gas ~~[Conservation]~~ as  
 21 provided in KRS 353.530;
- 22 (4) "Commission" means the Kentucky Oil and Gas Conservation Commission as  
 23 provided in KRS 353.565;
- 24 (5) "Person" means any natural person, corporation, association, partnership, receiver,  
 25 governmental agency subject to KRS 353.500 to 353.720, trustee, so-called  
 26 common-law or statutory trust, guardian, executor, administrator, or fiduciary of  
 27 any kind, federal agency, state agency, city, commission, political subdivision of the



- 1 Commonwealth, or any interstate body;
- 2 (6) "Correlative rights" means the reasonable opportunity of each person entitled  
3 thereto to recover and receive without waste the oil and gas in and under his tract or  
4 tracts, or the equivalent thereof;
- 5 (7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of  
6 gravity, which are produced at the well in liquid form by ordinary production  
7 methods and which are not the result of condensation of gas after it leaves the  
8 underground reservoir;
- 9 (8) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons  
10 not defined in subsection (7) of this section as oil;
- 11 (9) "Pool" means an underground reservoir containing a common accumulation of oil  
12 or gas or both. Each productive zone of a general structure which is completely  
13 separated from any other zone in the structure, or which for the purpose of KRS  
14 353.500 to 353.720 may be so declared by the department, is covered by the word  
15 "pool" as used herein;
- 16 (10) "Field" means the general area which is underlaid or appears to be underlaid by at  
17 least one (1) pool; and "field" includes the underground reservoir containing oil or  
18 gas or both. The words "field" and "pool" mean the same thing when only one (1)  
19 underground reservoir is involved; however, "field," unlike "pool," may relate to  
20 two (2) or more pools;
- 21 (11) "Just and equitable share of production" means, as to each person, an amount of oil  
22 or gas or both substantially equal to the amount of recoverable oil and gas in that  
23 part of a pool underlying his tract or tracts;
- 24 (12) "Abandoned," when used in connection with a well or hole, means a well or hole  
25 which has never been used, or which, in the opinion of the department, will no  
26 longer be used for the production of oil or gas or for the injection or disposal of  
27 fluid therein;

- 1 (13) "Workable bed" means:
- 2 (a) A coal bed actually being operated commercially;
- 3 (b) A coal bed that the department decides can be operated commercially and the
- 4 operation of which can reasonably be expected to commence within not more
- 5 than ten (10) years; or
- 6 (c) A coal bed which, from outcrop indications or other definite evidence, proves
- 7 to the satisfaction of the commissioner to be workable, and which, when
- 8 operated, will require protection if wells are drilled through it;
- 9 (14) "Well" means a borehole drilled, shaft driven, or hole dug or such proposed or
- 10 otherwise used for the purpose of producing natural gas or petroleum, or one
- 11 through which natural gas or petroleum is being produced, or for the purpose of
- 12 injecting any water, gas, or other fluid therein or one into which any water, gas, or
- 13 other fluid is being injected;
- 14 (15) "Shallow well" means any well drilled and completed at a depth less than four
- 15 thousand (4,000) feet except, in the case of any well drilled and completed east of
- 16 longitude line 84 degrees 30'; shallow well means any well drilled and completed at
- 17 a depth less than four thousand (4,000) feet or above the base of the lowest member
- 18 of the Devonian Brown Shale, whichever is the deeper in depth;
- 19 (16) "Deep well" means any well drilled and completed below the depth herein provided
- 20 for a shallow well;
- 21 (17) "Operator" means any owner of the right to develop, operate, and produce oil and
- 22 gas from a pool and to appropriate the oil and gas produced therefrom, either for
- 23 himself or for himself and others; in the event that there is no oil and gas lease in
- 24 existence with respect to the tract in question, the owner of the oil and gas rights
- 25 therein shall be considered as "operator" to the extent of seven-eighths (7/8) of the
- 26 oil and gas in that portion of the pool underlying the tract owned by such owner,
- 27 and as "royalty owner" as to one-eighth (1/8) interest in such oil and gas; and in the

1 event the oil is owned separately from the gas, the owner of the right to develop,  
2 operate, and produce the substance being produced or sought to be produced from  
3 the pool shall be considered as "operator" as to such pool;

4 (18) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to  
5 the extent that such owner is not an operator as defined in subsection (17) of this  
6 section;

7 (19) "Drilling unit" generally means the maximum area in a pool which may be drained  
8 efficiently by one (1) well so as to produce the reasonable maximum recoverable oil  
9 or gas in such area. Where the regulatory authority has provided rules for the  
10 establishment of a drilling unit and an operator, proceeding within the framework of  
11 the rules so prescribed, has taken the action necessary to have a specified area  
12 established for production from a well, such area shall be a drilling unit;

13 (20) "Underground source of drinking water" means those subsurface waters identified  
14 as such in regulations promulgated by the department which shall be consistent with  
15 the definition of underground source of drinking water in regulations promulgated  
16 by the Environmental Protection Agency pursuant to the Safe Drinking Water Act,  
17 42 U.S.C. secs. 300(f) et seq.;

18 (21) "Underground injection" means the subsurface emplacement of fluids by well  
19 injection but does not include the underground injection of natural gas for purposes  
20 of storage;

21 (22) "Endangerment of underground sources of drinking water" means underground  
22 injection which may result in the presence in underground water, which supplies or  
23 can reasonably be expected to supply any public water system, of any contaminant  
24 and if the presence of such contaminant may result in such system's not complying  
25 with any national primary drinking water regulation or may otherwise adversely  
26 affect the health of persons;

27 (23) "Class II well" means wells which inject fluids:

1 (a) Which are brought to the surface in connection with conventional oil or  
 2 natural gas production and may be commingled with waste waters from gas  
 3 plants which are an integral part of production operations, unless those waters  
 4 are classified as a hazardous waste at the time of injection;

5 (b) For enhanced recovery of oil or natural gas; and

6 (c) For storage of hydrocarbons which are liquid at standard temperature and  
 7 pressure;

8 (24) "Fluid" means any material or substance which flows or moves whether in a  
 9 semisolid, liquid, sludge, gas, or any other form or state.

10 ➔Section 1904. KRS 353.530 is amended to read as follows:

11 (1) The secretary of the Energy and Environment Cabinet~~[Governor]~~ shall appoint, as  
 12 director of the Division of Oil and Gas~~[Conservation]~~ in the Department for  
 13 Natural Resources, a person who has, at the time of his appointment, at least five (5)  
 14 years' experience in the exploration for or the production of oil or gas.

15 (2) It shall be his duty to administer the provisions of KRS 353.500 to 353.720 subject  
 16 to the direction and supervision of the commissioner.

17 (3) Before taking office, the director shall take oath, which shall be certified by the  
 18 officer administering it. The oath, in writing, and the certificate shall be filed in the  
 19 office of the Secretary of State.

20 (4) No director shall, while holding office, acquire any financial interest, directly or  
 21 indirectly, in any venture or activity for the exploration for or production of oil or  
 22 gas in this Commonwealth.

23 ➔Section 1905. KRS 353.560 is amended to read as follows:

24 (1) Without limiting its general authority, the department shall regulate:

25 (a) The drilling and plugging of all wells;

26 (b) The spacing or locating of wells; and

27 (c) The use of vacuum.

1 (2) The department shall make recommendations to the U.S. Environmental Protection  
 2 Agency and the Energy and Environment~~[Environmental and Public Protection]~~  
 3 Cabinet as to disposal of salt water and oil field wastes.

4 ➔Section 1906. KRS 353.565 is amended to read as follows:

5 (1) There is hereby created in the Department for Natural Resources, the "Kentucky Oil  
 6 and Gas Conservation Commission" which shall be composed of five (5) members.  
 7 Four (4) of the members shall be appointed by the Governor and the fifth member,  
 8 who shall serve as chairman of the commission, shall be the director of the Division  
 9 of Oil and Gas~~[Conservation]~~ and who shall serve in an ex officio capacity as a  
 10 nonvoting member except in the case of a tie. The four (4) members appointed by  
 11 the Governor shall be residents of this state and not more than one (1) of them may  
 12 be directly employed in the exploration for or the production of oil or gas, or  
 13 deriving more than fifty percent (50%) of that person's income from the exploration  
 14 for or production of oil or gas, or engaged in a business directly servicing or  
 15 supplying these activities. No member of the commission shall participate in the  
 16 deliberations of the commission or vote on any matter before the commission in  
 17 which he, his employer, or any business unit in which he has a financial interest is  
 18 an interested party, but a member of the commission is not prohibited from  
 19 deliberating or voting on matters of general interest, such as the fixing of statewide  
 20 spacing patterns, affecting him, his employer, or a business unit in which he has  
 21 financial interest as a member of a class of persons to be affected by an  
 22 administrative regulation or order of the commission. The commission shall not  
 23 contain more than one (1) representative from any one (1) operator, including  
 24 subsidiaries or affiliates. Of the four (4) members appointed by the Governor, two  
 25 (2) shall be residents of eastern Kentucky and two (2) shall be residents of western  
 26 Kentucky. Longitude 84 deg. 30 min. shall be deemed as the division line between  
 27 eastern Kentucky and western Kentucky.

- 1 (2) The members of the commission, except the chairman, shall be appointed for terms  
2 of four (4) years each, except that:
- 3 (a) The original appointments shall be for terms of one (1), two (2), three (3), and  
4 four (4) years respectively; and
- 5 (b) Of the members appointed after July 15, 1998, one (1) member appointed to  
6 fill the term expiring June 21, 1999, shall serve until January 21, 2000; one (1)  
7 member appointed to fill the term expiring June 21, 2000, shall serve until  
8 January 21, 2001; one (1) member appointed to fill one (1) of the two (2)  
9 terms expiring June 21, 2001, shall serve until January 21, 2002; and one (1)  
10 member appointed to fill the second of the two (2) terms expiring June 21,  
11 2001, shall serve until January 21, 2003; and subsequent appointments shall  
12 be for four (4) year terms ending on January 21. Each member appointed by  
13 the Governor shall serve until his successor has been appointed and qualified.  
14 Members may be reappointed by the Governor to serve successive terms. The  
15 members of the commission, before performing any duty hereunder, shall take  
16 an oath which shall be certified by the officer administering it. The oath in  
17 writing and the certificate shall be filed in the office of the Secretary of State.  
18 Vacancies in the membership appointed by the Governor shall be filled by  
19 appointment by him and for the unexpired term of the member whose office  
20 shall be vacant, and the appointment shall be made by the Governor within  
21 sixty (60) days of the occurrence of a vacancy. Any member appointed by the  
22 Governor may be removed by the Governor in case of incompetency, neglect  
23 of duty, gross immorality, or malfeasance of office.
- 24 (3) The commission shall meet at times and places as shall be designated by the  
25 chairman. The chairman may call a meeting of the commission at any time, and he  
26 shall call a meeting of the commission upon the written request of two (2) members.  
27 Notification of each meeting shall be given in writing to each member by the

1 chairman at least five (5) days in advance of the meeting. Any three (3) members,  
2 one (1) of which may be the chairman, shall constitute a quorum for the transaction  
3 of any business, including the holding of hearings. A majority of the commission  
4 present shall be required to determine any issue brought before it for decision.

5 (4) Each member of the commission, except the chairman, shall receive one hundred  
6 fifty dollars (\$150) per diem not to exceed one hundred (100) days per calendar year  
7 while actually engaged in the performance of his duties as a member of the  
8 commission. Each member of the commission, including the chairman, shall also be  
9 reimbursed for all reasonable and necessary expenses actually incurred in the  
10 performance of his duties as a member of the commission.

11 (5) The commission shall execute and carry out, administer, and enforce the provisions  
12 of KRS 353.651 and 353.652. The commission may make any investigation of  
13 records and facilities as it deems proper.

14 (6) If an emergency is found to exist by the commission which, in its judgment,  
15 requires the making, changing, renewal, or extension of an administrative regulation  
16 or order without first having a hearing, an emergency regulation may be  
17 promulgated in accordance with KRS Chapter 13A and an emergency order may be  
18 issued in accordance with KRS 13B.125.

19 (7) The commission shall have specific authority to:

20 (a) Promulgate and enforce reasonable administrative regulations and issue orders  
21 reasonably necessary to prevent waste, protect correlative rights, govern the  
22 practice and procedure before the commission, and otherwise administer the  
23 provisions of KRS 353.651 and 353.652; and

24 (b) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum  
25 for the production of any books, records, maps, charts, diagrams, and other  
26 pertinent documents, and administer oaths and affirmations to witnesses,  
27 whenever, in the judgment of the commission, it is necessary to do so for the

1           effective discharge of its duties under the provisions of KRS 353.651 and  
2           353.652.

3   (8) Any interested person may have the commission call a hearing for the purpose of  
4   taking action in respect to any matter within the jurisdiction of the commission by  
5   making a request therefor in writing. Upon the receipt of any request, the  
6   commission promptly shall call a hearing thereon, and, after the hearing and with all  
7   convenient speed, and in any event within thirty (30) days after the conclusion of  
8   the hearing, shall take appropriate action with regard to the subject matter thereof as  
9   it may deem appropriate. If the hearing is adjudicatory in nature, it shall be  
10   conducted in accordance with KRS Chapter 13B.

11   (9) Agreements made in the interest of conservation of oil or gas, or both, or for the  
12   prevention of waste, between and among owners or operators, or both, owning  
13   separate holdings in the same field or pool, or in any area that appears from  
14   geologic or other data to be underlaid by a common accumulation of oil or gas, or  
15   both, and agreements between and among these owners or operators, or both, and  
16   royalty owners therein, for the purpose of bringing about the development and  
17   operation of the field, pool, or area, or any part thereof, as a unit, and for  
18   establishing and carrying out a plan for the cooperative development and operation  
19   thereof, when the agreements are approved by the commission, are hereby  
20   authorized and shall not be held or construed to violate any of the laws of this state  
21   relating to trusts, monopolies, or contracts and combinations in restraint of trade.

22   (10) Nothing in this section shall be construed as giving to the commission the right or  
23   authority to supersede the authority of the department in the administration of KRS  
24   353.060.

25   ➔Section 1907. KRS 353.590 is amended to read as follows:

26   (1) Any person seeking a permit required by KRS 353.570 shall submit to the  
27   department a written application in a form prescribed by the department.



- 1 (2) Each application shall be accompanied by a specified fee as follows:
- 2 (a) The fee shall be three hundred dollars (\$300) for each well to be drilled,  
3 deepened, or reopened for any purpose relating to the production,  
4 repressuring, or storage of oil or gas, and for each water supply well,  
5 observation well, and geological or structure test hole.
- 6 (b) If the department receives delegation of authority for administration of the  
7 underground injection control program under Section 1425 of the Safe  
8 Drinking Water Act (Pub. L. 93-523 as amended), the department may, by  
9 administrative regulation, establish a fee or schedule of fees in an amount not  
10 to exceed fifty dollars (\$50) per well, in addition to the fees imposed by  
11 paragraph (a) of this subsection, upon each application to drill, deepen, or  
12 reopen a well for any purpose relating to the production, repressuring, or  
13 storage of oil or gas, and for each water supply well, observation well, and  
14 geological or structure test hole. The fees or schedule of fees to be established  
15 by administrative regulation shall not exceed an amount sufficient to recover  
16 the costs incurred by the department in administering the Underground  
17 Injection Control Program less any other state or federal funds which are made  
18 available for this purpose.
- 19 (c) All money paid to the State Treasurer for fees required by paragraph (b) of  
20 this subsection shall be for the sole use of the department in the administration  
21 of the Underground Injection Control Program under Section 1425 of the Safe  
22 Drinking Water Act (Pub. L. 93-523 as amended).
- 23 (3) All money paid to the State Treasurer for licenses and fees required by KRS  
24 353.500 to 353.720 shall be for the sole use of the department and shall be in  
25 addition to any moneys appropriated by the General Assembly for the use of the  
26 department.
- 27 (4) Each application shall be accompanied by a plat, which shows the location and

elevation of each well, prepared according to the administrative regulations promulgated under KRS 353.500 to 353.720. The plat shall be certified as accurate and correct by a professional land surveyor licensed in accordance with the provisions of KRS Chapter 322.

- (5) When any person submits to the Department for Natural Resources an application for a permit to drill a well, or to reopen, deepen, or temporarily abandon any well which is not covered by surety bond, the department shall, except as provided in this section, require from the well operator the posting of a bond. Except for bonds for well depths greater than four thousand (4,000) feet, the bond shall be posted in accordance with the following schedule:

Well Depth.....	Bond Amount
0 to 500 feet .....	\$500.00
501 feet to 1,000 feet .....	\$1,000.00
1,001 feet to 1,500 feet .....	\$1,500.00
1,501 feet to 2,000 feet .....	\$2,000.00
2,001 feet to 2,500 feet .....	\$2,500.00
2,501 feet to 3,000 feet .....	\$3,000.00
3,001 feet to 3,500 feet .....	\$3,500.00
3,501 feet to 4,000 feet .....	\$4,000.00
4,001 feet and deeper .....	\$5,000.00

- (6) The commission may establish a bond in a sum greater than five thousand dollars (\$5,000) for any well to be drilled to a depth of more than four thousand (4,000) feet if the members of the commission determine that the particular circumstances of the drilling of the well warrant an increase in the bond amount established in subsection (5) of this section.

- (7) All bonds required to be posted under this section shall:

(a) Be made in favor of the Department for Natural Resources;

- 1 (b) Be conditioned that the wells, upon abandonment, shall be plugged in  
 2 accordance with the administrative regulations of the department and that all  
 3 records required by the department be filed as specified; and
- 4 (c) Remain in effect until the plugging of the well is approved by the department,  
 5 or the bond is released by the department.
- 6 (8) An operator may petition the department to amend the drilling depth and bond  
 7 amount applicable to a particular well and shall not proceed to drill to a depth  
 8 greater than that authorized by the department until the operator is so authorized,  
 9 except pursuant to administrative regulations promulgated by the department.
- 10 (9) (a) Any qualified well operator, in lieu of the individual bond, may file with the  
 11 department a blanket bond according to the following tiered structure:
- 12 1. One (1) to twenty-five (25) wells require a ten thousand dollar (\$10,000)  
 13 bond;
- 14 2. Twenty-six (26) to one hundred (100) wells require a twenty-five  
 15 thousand dollar (\$25,000) bond;
- 16 3. One hundred one (101) to five hundred (500) wells require a fifty  
 17 thousand dollar (\$50,000) bond;
- 18 4. Five hundred one (501) or more wells require a one hundred thousand  
 19 dollar (\$100,000) bond.
- 20 (b) Any nonqualified well operator, in lieu of an individual bond, may file with  
 21 the department a blanket bond according to the following tiered structure:
- 22 1. One (1) to one hundred (100) wells require a fifty thousand dollar  
 23 (\$50,000) bond;
- 24 2. One hundred one (101) or more wells require a one hundred thousand  
 25 dollar (\$100,000) bond.
- 26 (10) To qualify for a blanket bond under the tiered structure set forth in subsection (9)(a)  
 27 of this section, an operator shall:

- 1 (a) Have a blanket bond in place filed with the department prior to July 15, 2006,  
2 and have no outstanding, unabated violations of KRS Chapter 353 or  
3 regulations adopted pursuant thereto which have not been appealed;
- 4 (b) Demonstrate for a period of thirty-six (36) months prior to the request for  
5 blanket bonding a record of compliance with the statutes and administrative  
6 regulations of the division; or
- 7 (c) Provide proof of financial ability to plug and abandon wells covered by the  
8 blanket bond.
- 9 (11) In addition to the requirements set forth in subsection (12) of this section, proof of  
10 financial ability set forth in subsection (10)(c) of this section shall be established by  
11 an audited financial statement that satisfies at least two (2) of the following ratios:
- 12 (a) A ratio of total liabilities to net worth less than two (2); or  
13 (b) A ratio of the sum of net income plus depreciation, depletion, and  
14 amortization to total liability greater than one-tenth (0.1); or  
15 (c) A ratio of current assets to current liabilities greater than one and five-tenths  
16 (1.5).
- 17 (12) If the operator is a corporate subsidiary, the operator further shall provide a  
18 corporate guarantee in which the guarantor shall be the parent corporation of the  
19 operator of the wells covered under the bond. The corporate guarantee shall  
20 provide:
- 21 (a) That if the operator fails to perform with the proper plugging and  
22 abandonment of any well covered by the blanket bond, the guarantor shall do  
23 so or provide for alternate financial assurance; and
- 24 (b) The corporate guarantee shall remain in force unless the guarantor sends  
25 notice of the cancellation by certified mail to the operator and to the  
26 department. Cancellation shall not occur, however, during the one hundred  
27 twenty (120) day period beginning on the first day that both the operator and

1 the department have received notice of cancellation, as evidenced by the  
2 certified mail return receipts.

3 (13) An operator shall not be eligible for blanket bonding if:

4 (a) It has more than ten (10) violations of KRS Chapter 353 or the regulations  
5 adopted pursuant thereto within the thirty-six (36) month period;

6 (b) It has any outstanding, unabated violations of KRS Chapter 353 or the  
7 regulations adopted pursuant thereto which have not been appealed;

8 (c) It has a forfeiture of a bond, whether an individual bond or portion of a  
9 blanket bond, on any permit where the operator has not entered into an agreed  
10 order with the department for the plugging and proper abandonment of the  
11 well or wells on the forfeited permit or permits; or

12 (d) It has a permit or permits, upon which a bond or portion of a bond has been  
13 forfeited and the proceeds from the forfeiture have been spent by the  
14 department to plug or reclaim the permitted well or wells, unless the operator  
15 has made restitution to the department for all costs associated with the  
16 forfeiture, plugging, and proper abandonment.

17 (14) A deposit in cash or a bank-issued irrevocable letter of credit may serve in lieu of  
18 either of the individual well or blanket bonds.

19 (15) Individuals acquiring a single well for domestic use may post a combination bond  
20 which shall consist of a cash bond in the amount of one thousand dollars (\$1,000)  
21 plus a lien on the property to cover future plugging costs. Only one (1) combination  
22 bond may be posted by each individual.

23 (16) A certificate of deposit, the principal of which is pledged in lieu of a bond and  
24 whose interest is payable to the party making the pledge, may serve for an  
25 individual well bond. A certificate of deposit, the principal of which is pledged in  
26 lieu of a bond and whose interest is payable to the party making the pledge, may  
27 serve for a blanket bond, provided that the first five thousand dollars (\$5,000) of the

- 1 blanket bond is posted with the department in cash.
- 2 (17) The bond or bonds referred to in this section shall be executed by the well operator  
3 as principal and, if a surety bond, by a corporate surety authorized to do business in  
4 the Commonwealth.
- 5 (18) A deposit in cash shall serve in lieu of either of the above bonds; all cash bonds  
6 accepted by the department shall be deposited into an interest-bearing account, with  
7 the interest thereon payable to the special agency account known as the oil and gas  
8 well plugging fund, created in subsection (24) of this section, to be used in  
9 accordance with the purposes described therein. All cash bonds being held by the  
10 department on July 13, 1990, shall likewise be deposited in the interest-bearing  
11 account, with the proceeds to be used for the purposes established for the oil and  
12 gas well plugging fund.
- 13 (19) The bond amounts prescribed by subsection (5) of this section shall be applicable  
14 only to permits issued upon and after July 15, 2006. All bonds posted for permits  
15 issued prior to July 15, 2006, shall remain in full force and effect for the duration of  
16 the permits.
- 17 (20) The blanket bond amounts prescribed by subsection (9) of this section shall be  
18 effective upon and after July 15, 2006. Any operator having filed a blanket bond  
19 with the department prior to July 15, 2006, may at its discretion increase the level of  
20 the blanket bond incrementally by increasing the blanket bond by the amount of the  
21 individual bond prescribed by subsection (9) of this section on any wells drilled  
22 subsequent to July 15, 2006, until the blanket bond has reached the level prescribed  
23 by subsection (9) of this section.
- 24 (21) A successor to the well operator shall post bond, pay a twenty-five dollar (\$25) fee  
25 per well to the department, and notify the department in writing in advance of  
26 commencing use or operation of a well or wells. The successor shall assume the  
27 obligations of this chapter as to a particular well or wells and relieve the original

1        permittee of responsibility under this chapter with respect to the well or wells. It  
 2        shall be the responsibility of the selling operator to require the successor operator to  
 3        post bond before use or operation is commenced by the successor and relief of  
 4        responsibility under this chapter is granted to the original permittee.

5        (22) If the requirements of this section with respect to proper plugging upon  
 6        abandonment and submission of all required records on all well or wells have not  
 7        been complied with within the time limits set by the department, by administrative  
 8        regulation, or by this chapter, the department shall cause a notice of noncompliance  
 9        to be served upon the operator by certified mail, addressed to the permanent address  
 10       shown on the application for a permit.

11       (a) The notice shall specify in what respects the operator has failed to comply  
 12       with this chapter or the administrative regulations of the department.

13       (b) If the operator has not reached an agreement with the department or has not  
 14       complied with the requirements set forth by it within forty-five (45) days after  
 15       mailing of the notice, the bond shall be forfeited to the department.

16       (23) A bond forfeited pursuant to the provisions of this chapter may be collected by an  
 17       attorney for the department or by the Attorney General, after notice from the  
 18       director of the Division of Oil and Gas~~[-Conservation]~~.

19       (24) All sums received under this section or through the forfeiture of bonds shall be  
 20       placed in the State Treasury and credited to a special agency account to be  
 21       designated as the oil and gas well plugging fund, which shall be an interest-bearing  
 22       account with the interest thereon payable to the fund. This fund shall be available to  
 23       the department and shall be expended for the plugging of any abandoned wells  
 24       coming within the authority of the department pursuant to this chapter. The  
 25       plugging of any well pursuant to this subsection shall not be construed to relieve the  
 26       operator or any other person from civil or criminal liability which would exist  
 27       except for the plugging. Any unencumbered and any unexpended balance of this

1 fund remaining at the end of any fiscal year shall not lapse but shall be carried  
 2 forward for the purpose of the fund until expended or until appropriated by  
 3 subsequent legislative action.

4 (25) Upon request by any person applying for a permit for a geological or structure test  
 5 hole, the department shall keep the location and elevation of the hole confidential  
 6 until the information is allowed to be released by the person obtaining the permit.

7 (26) For the purpose of this chapter, "water supply well" shall not include:

8 (a) Any well for a potable water supply for domestic use or for livestock; or

9 (b) Any water well used primarily for cooling purposes in an industrial process.

10 (27) Notwithstanding the provisions of KRS Chapter 353 or this section, no operator  
 11 shall be eligible to receive additional permits if that operator or any entity in which  
 12 it has an ownership interest has:

13 (a) Any outstanding, unabated violations of KRS Chapter 353 or the regulations  
 14 adopted pursuant thereto, which have not been appealed;

15 (b) A forfeiture of a bond, whether an individual bond or portion of a blanket  
 16 bond, on any permit where the operator has not entered into an agreed order  
 17 with the department for the plugging and proper abandonment of the well or  
 18 wells on the forfeited permit or permits; or

19 (c) A permit or permits upon which a bond or portion of a bond has been  
 20 forfeited, and the proceeds therefrom having been spent by the department to  
 21 plug or reclaim the permitted well, or wells, unless the operator has made  
 22 restitution to the department for all costs associated with the forfeiture,  
 23 plugging, and proper abandonment.

24 ➔Section 1908. KRS 353.5901 is amended to read as follows:

25 (1) In all cases where there has been a complete severance of the ownership of the oil  
 26 and gas from the ownership of the surface to be disturbed, a well operator shall  
 27 submit to the department an operations and reclamation proposal at the time of



1 filing an application for permit to drill, deepen, or reopen a well. The proposal shall  
2 be filed on forms provided by the department and shall include:

3 (a) A proposal to prevent erosion of and sedimentation from the well site and all  
4 disturbed areas, including roads;

5 (b) A narrative description of the location of all areas to be disturbed, including  
6 the location of roads, gathering lines, the well site, tanks and other storage  
7 facilities, and any other information that may be required by the department.  
8 Accompanying this narrative description shall be a plat depicting the location  
9 on the land of all of these disturbances or facilities;

10 (c) A signed agreement by the surface owners of all disturbed areas to the  
11 operations and reclamation proposal; and

12 (d) Any additional information that the department may require.

13 (2) In all cases where there has been a complete severance of the ownership of the oil  
14 and gas from the ownership of the surface and the surface owners of all disturbed  
15 areas have not signed agreements with the well operator agreeing to the operations  
16 and reclamation proposal, at the time of filing the application the well operator shall  
17 cause to be delivered to the surface owners of all disturbed areas who have not  
18 agreed to the operations and reclamation proposal, by certified mail, return receipt  
19 requested:

20 (a) A copy of the operations and reclamation proposal required by paragraph (a)  
21 of subsection (1) of this section, and the narrative description of land  
22 disturbances and plat required by paragraph (b) of subsection (1) of this  
23 section; and

24 (b) A notice to read as follows: "If you do not agree with the proposed use of your  
25 land by the well operator, the well operator may request mediation of your  
26 dispute by the General Counsel's Office of the Department for Natural  
27 Resources. If mediation is requested, and you decide to participate, each party

1 to the mediation will be charged one hundred dollars (\$100) to help cover the  
 2 cost of mediation. You will be notified of the time and place for mediation, if  
 3 the well operator chooses mediation, and of your right to participate."

4 The certified mail receipt, when returned, shall be filed by the well operator with  
 5 the department and made part of the permit application.

6 (3) If the well operator has been unable to reach agreement with the surface owners of  
 7 all areas to be disturbed in all cases where there has been a complete severance of  
 8 the ownership of the oil and gas from the ownership of the surface to be disturbed,  
 9 the permit required by this chapter shall not be issued until the dispute has been  
 10 referred to mediation by the General Counsel's Office of the Department for Natural  
 11 Resources, and mediation has been concluded either by agreement between the  
 12 parties or by a report of the mediator, in accordance with subsection (4) of this  
 13 section.

14 (4) The well operator may request mediation any time after filing the permit  
 15 application, and all parties participating in the mediation shall pay a nonrefundable  
 16 fee of one hundred dollars (\$100) to the Kentucky State Treasurer, which shall be  
 17 for the sole use of the department and shall be in addition to any money  
 18 appropriated by the General Assembly for the use of the department. The  
 19 department shall notify the well operator and all surface owners of areas to be  
 20 disturbed by drilling who have not agreed to the operation and reclamation plan of  
 21 the date and time mediation shall be conducted by certified mail, return receipt  
 22 requested. The department shall conduct mediation at the site proposed to be  
 23 disturbed within fifteen (15) days from the date requested, if practicable. At the  
 24 mediation, the mediator will attempt to facilitate an agreement between the well  
 25 operator and the surface owner. If an agreement is not forthcoming after mediation,  
 26 the mediator shall, within five (5) days after mediation, issue a report to the director  
 27 of the Division of Oil and Gas~~[-Conservation]~~ recommending that the director:

- 1 (a) Accept the proposal as submitted by the well operator; or
- 2 (b) Accept the proposal with modifications set forth by the mediator.
- 3 (5) If an agreement between the well operator and the surface owners of all disturbed
- 4 areas is not forthcoming after mediation, the mediator shall consider the following
- 5 factors as to the reasonable use of the surface by the well operator in issuing a report
- 6 to the director, which recommendations shall become permit conditions:
- 7 (a) The location of roads, gathering lines, and tank batteries;
- 8 (b) The timing of the operation, considering seasonal uses of the land by the
- 9 surface owner and the need of the well operator to drill expeditiously;
- 10 (c) The impact on the other uses of the land by the surface owner, including the
- 11 location of timber, houses, barns, ponds, crops, and other improvements;
- 12 (d) Whether the proposal includes a plan for timely, effective reclamation of all
- 13 disturbed areas; and
- 14 (e) Any other information deemed appropriate by the mediator.
- 15 (6) The director shall act upon the recommendation of the mediator within five (5) days
- 16 of the receipt of the mediation report.

17 ➔Section 1909. KRS 353.640 is amended to read as follows:

- 18 (1) The operator shall provide a list to the department of all persons reasonably known
- 19 to own an oil or gas interest in any tract, or portion thereof, proposed to be pooled in
- 20 an application to the department for a pooling order. A pooling order shall be made
- 21 only after the department provides notice to all persons reasonably known to own an
- 22 oil or gas interest in any tract, or a portion thereof, proposed to be pooled after a
- 23 hearing has been held. In the event of the filing of an application for a pooling order
- 24 under KRS 353.630(2) where unknown owners or nonlocatable owners exist, the
- 25 operator shall cause to be published, at least twenty (20) days prior to the hearing on
- 26 the application for the pooling order, one (1) notice in the newspaper of the largest
- 27 circulation in each county in which any tract, or portion thereof, proposed to be

1 pooled is located. The notice shall:

- 2 (a) State that an application for a pooling order is being filed with the Division of
  - 3 Oil and Gas~~[- Conservation]~~ in the Department for Natural Resources;
  - 4 (b) Describe any tract, or portion thereof, proposed to be pooled;
  - 5 (c) In the case of an unknown owner, identify the name of the last known owner;
  - 6 (d) In the case of a nonlocatable owner, identify the owner and the owner's last
  - 7 known address; and
  - 8 (e) State that any party claiming an interest in any tract, or portion thereof,
  - 9 proposed to be pooled should contact the operator at the published address
  - 10 and provide a copy of the notification to the director of the Division of Oil and
  - 11 Gas~~[- Conservation]~~ in the Department for Natural Resources within twenty
  - 12 (20) days of the date of publication.
- 13 (2) A pooling order shall authorize the drilling, deepening, or reopening, and the
- 14 operation of a well for the production of oil or gas on the tracts or portions thereof
- 15 pooled; shall designate the operator to drill and operate the well; shall prescribe the
- 16 time and manner in which all owners of operating interests in the pooled tracts or
- 17 portions thereof may elect to participate therein; shall provide that all reasonable
- 18 costs and expenses of drilling, deepening, or reopening, and the completing,
- 19 operating, plugging, and abandoning the well shall be borne, and all production
- 20 from the well shall be shared by all owners of operating interests in proportion to
- 21 the net mineral acres in the pooled tracts owned or under lease to each owner; and
- 22 shall make provision for the payment of the reasonable actual cost thereof,
- 23 including a reasonable charge for supervision, by all those who elect to participate
- 24 therein.
- 25 (3) A pooling order shall establish a procedure for the owner of an operating interest
- 26 who does not decide to become a participating operator to elect to either:
- 27 (a) Surrender, by means of sale or lease, the interest to a participating operator on

1 a reasonable basis and for a reasonable consideration, which if not agreed  
2 upon shall be determined by the director of the Division of Oil and Gas  
3 Conservation]; or

4 (b) Share in the operation of the well as a nonparticipating operator on a carried  
5 basis after the proceeds allocable to his or her share equal two hundred percent  
6 (200%) of the share of the costs allocable to his or her interest.

7 (4) An oil or gas owner whose identity and location remain unknown at the conclusion  
8 of a hearing concerning the entry of a pooling order for which public notice was  
9 given and whose interest is pooled pursuant to KRS 353.630(3) shall be deemed to  
10 have elected to lease the interest to the oil or gas operator, exclusive of one-eighth  
11 (1/8) of the production attributable to the unleased interest, and shall not be entitled  
12 to make the election established in subsection (3) of this section.

13 (5) Except as provided in this subsection, an oil or gas owner who does not make an  
14 election under the pooling order within thirty (30) days of the entry of the order  
15 shall be deemed to have leased the oil or gas interest to the oil or gas well operator  
16 in the manner established in subsection (4) of this section. If the holder of an  
17 operating interest has obtained the interest by lease or other agreement granting the  
18 right to conduct operations to anyone other than the holder of the oil and gas estate,  
19 and if the owner of the operating interest does not make an election under the  
20 pooling order, the holder of the operating interest shall be deemed to have elected to  
21 share in the operation of the well as a nonparticipating operator on a carried basis  
22 after the proceeds allocable to his or her share equal two hundred percent (200%) of  
23 the share of the costs allocable to his or her interest.

24 (6) A person whose interest is subject to an oil or gas lease or other agreement which  
25 grants to another the right to operate or conduct operations shall not own an  
26 operating interest for the purposes of subsection (3) of this section.

27 (7) A certified copy of any pooling order entered under KRS 353.500 to 353.720 shall

1 be entitled to be recorded in the office of the county clerk of the county or counties  
 2 in which all or any portion of the pooled tract is located, and the record of the order,  
 3 from the time of lodging the order for record, shall be notice of the order to all  
 4 persons.

5 ➔Section 1910. KRS 353.650 is amended to read as follows:

6 (1) If one (1) or more of the owners of any operating interest in any portion of the  
 7 pooled tract shall drill, deepen or reopen and operate, or pay the costs of drilling,  
 8 deepening or reopening and operating a well for the benefit of another owner of an  
 9 opening interest, as provided in the pooling order, then such owner or owners shall  
 10 be entitled to the proceeds from the share of production from the tracts or portions  
 11 thereof pooled accruing to the interest of such other owner, exclusive of any royalty  
 12 reserved in any lease or leases of such tracts or portions thereof or exclusive of one-  
 13 eighth (1/8) of production attributable to all unleased tracts or portions thereof, until  
 14 such proceeds equal the sums payable by or charged to the interest of the other  
 15 owner plus a reasonable charge for interest on such sums.

16 (2) If a dispute shall arise as to the costs of drilling, deepening or reopening, and  
 17 operating a well, the director of the Division of Oil and Gas[~~Conservation~~] shall  
 18 determine and apportion the costs.

19 ➔Section 1911. KRS 353.670 is amended to read as follows:

20 (1) All rules, regulations and amendments promulgated under KRS 353.500 to 353.720  
 21 shall be promulgated by the department after notice and a hearing. At all hearings  
 22 held to consider any rules, regulations or amendments thereto, any interested person  
 23 shall be entitled to be heard.

24 (2) All hearings held under this section shall be held at such time and place as is  
 25 specified by the department, and according to rules and regulations promulgated  
 26 under KRS 353.500 to 353.720. A written record of each hearing shall be kept,  
 27 unless the keeping of a record shall be waived by all parties who participate therein.

1 All interested persons shall be entitled to be heard at all hearings conducted under  
2 KRS 353.500 to 353.720.

3 (3) The director of the Division of Oil and Gas~~[Conservation]~~, or his representatives,  
4 shall attend all hearings under this section conducted by the department.

5 (4) All rules, regulations and orders promulgated or issued under KRS 353.500 to  
6 353.720 shall be in writing, shall be entered in full and indexed in books to be kept  
7 by the department for that purpose, shall be public records open for inspection at all  
8 times during office hours, and shall be filed in accordance with the provisions of  
9 KRS Chapter 13A. A copy of any rule, regulation or order, certified by the  
10 commissioner of the Department for Natural Resources or the director of the  
11 Division of Oil and Gas~~[Conservation]~~, shall be received in evidence in all courts  
12 of this Commonwealth without any further authentication thereof.

13 ➔Section 1912. KRS 353.739 is amended to read as follows:

14 (1) Within ten (10) days of the drilling of the well, the well operator shall have  
15 performed, at its expense, a directional survey for any well drilled in an active  
16 mining area or an inclination survey for any well drilled through a workable coal  
17 bed that is not in an active mining area.

18 (2) If, as a result of the as-drilled well location plat prepared pursuant to KRS 353.735  
19 or the directional or inclination survey performed under subsection (1) of this  
20 section, it is determined that a well or any portion of a well has been drilled at either  
21 a surface location or a subsurface location at the base of the lowest workable coal  
22 bed that is not in compliance with the allowable distances established in KRS  
23 353.737(2), as well as the spacing requirements of KRS 353.610, then the well  
24 operator shall promptly notify the Division of Oil and Gas~~[Conservation]~~ of the  
25 noncompliance. The division shall order the well operator to remediate the  
26 noncompliance to bring the well within the allowable distances that have been  
27 exceeded. If the division determines that the well's permit conditions cannot be

1 satisfied by remediation or that the well operator is unable to satisfactorily meet the  
 2 ordered remediation, then the division shall order the well to be plugged and  
 3 abandoned.

4 (3) No remediation shall be required under subsection (2) of this section if:

5 (a) A directional survey indicates that the well is not in compliance with the  
 6 allowable distance established in KRS 353.737(2)(b), but the well is in  
 7 compliance with the spacing requirements of KRS 353.610; and

8 (b) The well operator receives a waiver for the noncompliance from the coal  
 9 operator or permittee.

10 (4) No remediation shall be required under subsection (2) of this section if:

11 (a) An inclination survey indicates that the well is not in compliance with the  
 12 allowable distances established in KRS 353.737(2), but the well is in  
 13 compliance with the spacing requirements of KRS 353.610; and

14 (b) The well operator performs or causes to be performed a directional survey to  
 15 identify the correct subsurface location of the wellbore.

16 ➔Section 1913. KRS 353.743 is amended to read as follows:

17 A coal, oil, or gas operator that has a directional or inclination survey performed pursuant  
 18 to KRS 353.737 and 353.739 shall provide a copy of the survey to the Division of Oil and  
 19 Gas~~[-Conservation]~~. The division shall be responsible for reasonably maintaining and  
 20 updating all information required by this chapter regarding oil and gas wells.

21 ➔Section 1914. KRS 353.745 is amended to read as follows:

22 (1) For gathering lines installed across terrain with a slope of greater than twenty  
 23 degrees (20°), the well operator shall mark the location of the gathering lines with  
 24 line markers at interval distances not to exceed two hundred fifty (250) feet.

25 (2) The Division of Oil and Gas~~[-Conservation]~~ shall make available on its Web site  
 26 maps or other relevant information showing the location of gathering lines, as filed  
 27 by the well operator, within thirty (30) days of the information being filed.



1 (3) Prior to the issuance of a permit to drill, the division shall determine whether the  
 2 proposed well will intersect an active mining area by reviewing the pertinent mine  
 3 maps filed with the Office of Mine Safety and Licensing. If the proposed well will  
 4 intersect with an active mining area, the division shall:

5 (a) Determine whether the coal mine permittee has been properly notified  
 6 pursuant to KRS 353.050; and

7 (b) Issue the permit to drill on the condition that a directional survey be  
 8 performed pursuant to KRS 353.739(1).

9 (4) In order to perform the duties under this section, the Division of Oil and Gas  
 10 ~~Conservation~~ shall create and adequately staff the positions required to perform the  
 11 duties. The division may charge an administrative fee not to exceed fifty dollars  
 12 (\$50) per permit application to perform its duties under this section.

13 ➔Section 1915. KRS 353.752 is amended to read as follows:

14 (1) There is created and established within the Finance and Administration Cabinet a  
 15 Kentucky Gas Pipeline Authority composed of the following nine (9) members:

16 (a) The secretary of the Finance and Administration Cabinet or his or her  
 17 designee;

18 (b) The secretary of the Tourism, Arts and Heritage Cabinet or his or her  
 19 designee;

20 (c) The secretary of the Energy and Environment~~Environmental and Public~~  
 21 ~~Protection~~ Cabinet or his or her designee;

22 (d) A member designated by the Kentucky Oil and Gas Association;

23 (e) A member designated by the Kentucky Society of Professional Engineers who  
 24 shall have experience in oil and gas pipeline construction;

25 (f) A member designated by the Kentucky Gas Association representing a natural  
 26 gas distribution company with a minimum annual throughput of ten billion  
 27 (10,000,000,000) cubic feet;

- 1 (g) A citizen member appointed by the Governor; and
- 2 (h) Two (2) nonvoting legislator members, one (1) appointed by the President of  
3 the Senate and one (1) by the Speaker of the House of Representatives.
- 4 (2) Members described in paragraphs (d), (e), (f), and (g) of subsection (1) of this  
5 section shall begin their terms on August 1, 2005. The initial terms of the members  
6 described in paragraphs (d) and (e) shall be two (2) years. The initial terms of the  
7 members described in paragraphs (f) and (g) shall be three (3) years and four (4)  
8 years, respectively. All subsequent terms for those members shall be four (4) years.
- 9 (3) Vacancies occurring during the term of any member shall be filled in the same  
10 manner as the original appointment.
- 11 (4) The nine (9) members of the authority and their successors shall be a body corporate  
12 and politic, with perpetual succession, constituting a public corporation and a  
13 governmental agency and instrumentality of the Commonwealth. The authority shall  
14 have the power, in its corporate name, to contract and be contracted with, acquire  
15 and convey property, sue and be sued, have and use a corporate seal, and exercise  
16 all of the usual powers of corporations not inconsistent with the authority's  
17 specifically enumerated powers.
- 18 (5) The members of the authority shall receive no compensation for their services, but  
19 shall be entitled to reimbursement for their actual and necessary expenses incurred  
20 in the performance of their duties under KRS 353.750 to 353.776.
- 21 (6) The secretary of the Finance and Administration Cabinet shall serve as chair, and  
22 the members of the authority shall elect a vice chair from their membership and  
23 appoint a secretary.
- 24 (7) The secretary of the Finance and Administration Cabinet shall designate an  
25 employee of his or her cabinet to serve as treasurer of the authority. The treasurer  
26 shall give bond to the authority for a faithful accounting for all funds coming into  
27 his or her custody, in the amount the authority may prescribe, drawn upon a surety

1 company qualified to do business in the Commonwealth. The premium shall be paid  
2 by the Commonwealth.

- 3 (8) The authority shall establish and maintain an office and keep accurate and complete  
4 records of the authority's actions and proceedings, which shall be available for  
5 public inspection in accordance with KRS 61.870 to 61.884. The Finance and  
6 Administration Cabinet shall provide the funds, staff, facilities, and materials  
7 required by the authority in the conduct of its duties and functions.

8 ➔Section 1916. KRS 360.100 is amended to read as follows:

- 9 (1) The following definitions apply for the purposes of this section:

10 (a) "High-cost home loan" means a loan other than an open-end credit plan or a  
11 reverse mortgage transaction in which:

- 12 1. The principal amount of the loan is greater than fifteen thousand dollars  
13 (\$15,000) and does not exceed two hundred thousand dollars  
14 (\$200,000);
- 15 2. The borrower is a natural person;
- 16 3. The debt is incurred by the borrower primarily for personal, family, or  
17 household purposes;
- 18 4. The loan is secured by a mortgage on residential real property or secured  
19 by collateral which has a mortgage lien interest in residential real  
20 property, which is or will be occupied by the borrower as the borrower's  
21 principal dwelling; and
- 22 5. The terms of the loan exceed either or both of the following thresholds:
  - 23 a. Without regard to whether the loan transaction is or may be a  
24 "residential mortgage transaction" as defined in 12 C.F.R.  
25 226.2(a)(24), as amended from time to time, the loan at the time  
26 the loan is consummated is such that the loan is considered a  
27 "mortgage" under section 152 of the Home Ownership and Equity

1 Protection Act of 1994, Pub. L. No. 103-325, 15 U.S.C. sec.  
 2 1602(aa), as the same may be amended from time to time, and  
 3 regulations adopted pursuant thereto by the Federal Reserve Board,  
 4 including 12 C.F.R. 226.32, as the same may be amended from  
 5 time to time; or

6 b. The total points and fees payable by the borrower at or before the  
 7 loan closing exceed the greater of three thousand dollars (\$3,000)  
 8 or six percent (6%) of the total loan amount as shown as the  
 9 amount financed on the final Truth-in-Lending Statement.

10 (b) "Lender" means any person who funds or negotiates the terms of a high-cost  
 11 home loan or acts as a mortgage broker or lender, finance company, or retail  
 12 installment seller with respect to a high-cost home loan. However, any person  
 13 who purchases or is otherwise assigned a high-cost home loan shall be subject  
 14 to an action for violation of this section only if the violation for which the  
 15 action or proceeding is brought is apparent on the face of the disclosure or the  
 16 underlying promissory note.

17 (c) "Material change" means any of the following:

- 18 1. A change in the type of loan being offered, such as a fixed or variable  
 19 rate loan or a loan with a balloon payment;
- 20 2. A change in the term of the loan, as reflected in the number of monthly  
 21 payments due before a final payment is scheduled to be made;
- 22 3. An increase in the interest rate of more than one-quarter of one percent  
 23 (0.25%), or an equivalent increase in the amount of discount points  
 24 charged;
- 25 4. A change regarding the requirement of escrow for taxes and insurance;  
 26 and
- 27 5. A change regarding the requirement or payment, or both, of private

1 mortgage insurance.

- 2 (d) 1. "Total points and fees payable by the consumer at or before the loan  
3 closing" means all amounts payable by a borrower at or before the  
4 closing of a home loan, excluding any interest or time-price differential  
5 due at closing on the loan proceeds and includes:
- 6 a. All mortgage broker fees, including fees paid by the consumer  
7 directly to the broker, fees paid by the consumer to the creditor for  
8 delivery to the broker, and yield spread premiums paid by the  
9 creditor to the broker;
  - 10 b. Any amount payable under an add-on or discount system of  
11 additional charges:
  - 12 c. Service, transaction, activity, and carrying charges that exceed  
13 similar charges on a noncredit account;
  - 14 d. Points, loan fees, assumption fees, finder's fees, and similar  
15 charges;
  - 16 e. Appraisal, investigation, and credit report fees when service is  
17 provided by the lender or an affiliate and not by a third party;
  - 18 f. Charges imposed on a creditor by another person for purchasing or  
19 accepting the borrower's obligation, if the borrower is required to  
20 pay the charges in cash, as an addition to the loan obligation, or as  
21 a deduction from loan proceeds;
  - 22 g. Premiums or other charges for credit life, accident, health, or loss-  
23 of-income insurance, or debt-cancellation coverage, whether or not  
24 the debt-cancellation coverage is insurance under applicable law;  
25 or
  - 26 h. Closing agent fees charged by a third party, but only if the lender  
27 requires the particular services for which the borrower is charged

1 and the lender requires the imposition of the charge or the lender  
2 retains a portion of the charge.

3 2. "Total points and fees payable by the consumer at or before the loan  
4 closing" does not include real estate related fees paid to third parties if  
5 the charge is reasonable, the creditor receives no direct or indirect  
6 compensation in connection with the charge, and the charge is not paid  
7 to an affiliate of the creditor. Real estate related fees include:

- 8 a. Fees for title examination, abstract of title, title insurance, property  
9 survey, and similar purposes;
- 10 b. Fees for preparing loan-related documents, such as deeds,  
11 mortgages, and reconveyance or settlement documents;
- 12 c. Notary and credit report fees;
- 13 d. Property appraisal fees or fees for inspections to assess the value or  
14 condition of the property if the service is performed prior to  
15 closing, including fees related to pest infestation and flood hazard  
16 determinations; and
- 17 e. Amounts required to be paid into escrow or trustee accounts if the  
18 amounts would not otherwise be included in the finance charge.

19 (2) A high-cost home loan shall be subject to the following limitations:

- 20 (a) 1. No lender may make, provide, or arrange a high-cost home loan with a  
21 prepayment penalty unless the lender offers the borrower a loan without  
22 a prepayment penalty, the offer is in writing, and the borrower initials  
23 the offer to indicate that the borrower has declined the offer. The lender  
24 shall disclose the discount in rate received in consideration for a high-  
25 cost home loan with the prepayment penalty; and
- 26 2. If a borrower declines an offer required in paragraph (a)1. of this  
27 subsection, the lender may include a prepayment penalty schedule. No

1           prepayment penalty shall be assessed against the borrower following the  
2           third anniversary date of the mortgage or sixty (60) days prior to the date  
3           of the first interest rate reset, whichever is less. No prepayment penalty  
4           shall exceed three percent (3%) for the first year, two percent (2%) for  
5           the second year, and one percent (1%) for the third year of the  
6           outstanding balance of the loan; but in no event shall a prepayment  
7           penalty be assessed against a borrower refinancing with the mortgage  
8           loan company that funded the mortgage;

9           (b) A high-cost home loan may not contain a provision which permits the lender,  
10          in its sole discretion, to accelerate the indebtedness. This provision does not  
11          apply when repayment of the loan has been accelerated by default, pursuant to  
12          a due-on-sale provision, or pursuant to some other provision of the loan  
13          documents unrelated to the payment schedule;

14          (c) A high-cost home loan may not contain a scheduled payment that is more than  
15          twice as large as the average of earlier scheduled payments. This provision  
16          does not apply when the payment schedule is adjusted to the seasonal or  
17          irregular income of the borrower;

18          (d) A high-cost home loan may not contain a payment schedule with regular  
19          periodic payments that cause the principal balance to increase;

20          (e) A high-cost home loan may not contain a provision which increases the  
21          interest rate after default. This provision does not apply to interest rate  
22          changes in a variable rate loan otherwise consistent with the provisions of the  
23          loan documents, provided the change in the interest rate is not triggered by the  
24          event of default or the acceleration of the indebtedness;

25          (f) A high-cost home loan may not include terms under which more than two (2)  
26          periodic payments required under the loan are consolidated and paid in  
27          advance from the loan proceeds provided to the borrower;

1 (g) A lender may not charge a borrower any fees to modify, renew, extend, or  
2 amend a high-cost home loan or to defer any payment due under the terms of a  
3 high-cost home loan, unless the fees are less than one-half (1/2) of any fees  
4 that would be charged for a refinance or unless the borrower is in default and  
5 it is in the borrower's best interest;

6 (h) A lender may not make a high-cost home loan unless the borrower has been  
7 provided the following notice or a substantially similar notice, in writing, not  
8 later than the time that notice provided by 12 C.F.R. 226.31(c), as amended  
9 from time to time, is required:

10 NOTICE TO BORROWER

11 IF YOU OBTAIN THIS LOAN, THE LENDER WILL HAVE A  
12 MORTGAGE ON YOUR HOME. YOU COULD LOSE YOUR HOME AND  
13 ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR  
14 OBLIGATIONS UNDER THE LOAN.

15 MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY  
16 BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR  
17 CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT  
18 HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF  
19 PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE  
20 AND FEES COULD ALSO VARY BASED ON WHICH LENDER OR  
21 BROKER YOU SELECT. YOU SHOULD SHOP AROUND AND  
22 COMPARE LOAN RATES AND FEES.

23 YOU SHOULD ALSO CONSIDER CONSULTING A QUALIFIED  
24 INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED  
25 FINANCIAL ADVISOR REGARDING THE RATE, FEES, AND  
26 PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED.  
27 YOU SHOULD CONTACT THE UNITED STATES DEPARTMENT OF



1 HOUSING AND URBAN DEVELOPMENT FOR A LIST OF CREDIT  
2 COUNSELORS AVAILABLE IN YOUR AREA.

3 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT  
4 MERELY BECAUSE YOU HAVE RECEIVED THESE DISCLOSURES OR  
5 HAVE SIGNED A LOAN APPLICATION.

6 REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE  
7 ARE YOUR RESPONSIBILITY. NOT ALL LENDERS PROVIDE  
8 ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK  
9 YOUR LENDER ABOUT THESE SERVICES.

10 ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO  
11 YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE  
12 TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING  
13 CREDITORS;

- 14 (i) A lender may not make a high-cost home loan unless the lender reasonably  
15 believes at the time the loan is consummated that one (1) or more of the  
16 borrowers, when considered individually or collectively, will be able to make  
17 the scheduled payments to repay the loan based upon a consideration of their  
18 current and expected income, current obligations, current employment status,  
19 and other financial resources, other than the borrower's equity in the dwelling  
20 which secures repayment of the loan. A borrower shall be presumed to be able  
21 to make the scheduled payments to repay the loan if, at the time the loan is  
22 consummated:

- 23 1. The borrower's total monthly debts, including amounts owed under the  
24 loan, do not exceed fifty percent (50%) of the borrower's monthly gross  
25 income as verified by the credit application, the borrower's financial  
26 statement, a credit report, financial information provided to the lender by  
27 or on behalf of the borrower, or any other reasonable means;

- 1           2. The loan has been approved by an automated underwriting service
- 2           offered by FNMA or Freddie MAC;
- 3           3. The lender verifies and documents that the borrower has liquid assets
- 4           equal to fifty percent (50%) of the principal loan amount; or
- 5           4. The borrower has sufficient residual income as defined in the guidelines
- 6           established in 38 C.F.R. 36.4337(e) and United States Department of
- 7           Veterans Affairs~~[Administration]~~ form 26-6393;
- 8       (j) If the proceeds of the high-cost home loan are used to refinance an existing
- 9           high-cost home loan held by the same lender as noteholder, the lender may not
- 10          directly or indirectly finance:
- 11           1. Any prepayment fees or penalties payable by the borrower; or
- 12           2. Points and fees, excluding those provided for in 12 C.F.R. 226.4(c)(7),
- 13           which in the aggregate are in excess of four percent (4%) of the total
- 14           amount financed;
- 15       (k) A lender or mortgage loan broker may not, within one (1) year of the
- 16           consummation of a high-cost home loan, charge a borrower points and fees in
- 17           connection with a high-cost home loan if the proceeds of the high-cost home
- 18           loan are used to refinance an existing high-cost home loan on which points
- 19           were charged. A lender may not, at any time, charge a borrower points and
- 20           fees in addition to those allowed by 12 C.F.R. 226.4(c)(7) if the proceeds of
- 21           the high-cost home loan are used to refinance an existing high-cost home loan,
- 22           on which points were charged, held by the same lender as noteholder.
- 23           However, points and fees in accordance with this section may be charged on
- 24           any proceeds of a high-cost home loan which are in excess of the amount
- 25           refinanced on the existing high-cost home loan;
- 26       (l) A lender may not pay a contractor under a home-improvement contract from
- 27           the proceeds of a high-cost home loan other than by an instrument payable to

1 the borrower or jointly to the borrower and the contractor, or at the election of  
2 the borrower, through a third-party escrow agent in accordance with terms  
3 established in a written agreement signed by the borrower, the lender, and the  
4 contractor prior to the disbursement;

5 (m) A lender shall not refinance, replace, or consolidate a zero interest rate or low  
6 interest rate loan made by a governmental or nonprofit lender with a high-cost  
7 home loan. For purposes of this paragraph, a low interest rate loan is defined  
8 as a loan that carries a current interest rate that is two (2) percentage points or  
9 more below the current yield on United States Treasury securities with a  
10 comparable maturity;

11 (n) A lender shall not finance single premium credit life, credit accident, credit  
12 health, credit disability, or credit loss of income insurance in connection with  
13 a high-cost home loan;

14 (o) A lender shall not make a high-cost home loan unless the lender has made  
15 available to the borrower a videotape, or other similar audio-video media  
16 format such as DVD or CD, approved by the Department~~{Office}~~ of Financial  
17 Institutions, which explains the borrower's rights and responsibilities with  
18 regard to this section or high-cost home loans. A lender shall have available  
19 for viewing at least one (1) copy of the video in the principal office and each  
20 branch office of the lender;

21 (p) A lender shall not make a high-cost home loan subject to a mandatory  
22 arbitration clause that is oppressive, unfair, unconscionable, or substantially in  
23 derogation of the rights of consumers. Arbitration clauses that comply with  
24 the standards set forth in the Statement of Principles of the National  
25 Consumer Dispute Advisory Committee of the American Arbitration  
26 Association in effect on June 24, 2003, shall be presumed not to violate this  
27 subsection;

1 (q) A lender shall not charge a late payment fee on a high-cost home loan except  
2 in accordance with the following:

- 3 1. The late payment fee may not be in excess of five percent (5%) of the  
4 amount of the payment past due or ten dollars (\$10), whichever is  
5 greater;
- 6 2. The loan documents must specifically authorize the late payment fee;
- 7 3. The late payment fee may only be assessed for a payment past due  
8 fifteen (15) days or more; and
- 9 4. The late payment fee may only be charged once with respect to a single  
10 late payment;

11 (r) A lender may not charge a borrower a fee for the first request of each calendar  
12 year for a written payoff calculation. Thereafter, for each subsequent request  
13 in a calendar year, the lender may charge a reasonable fee not to exceed in  
14 excess of ten dollars (\$10) or actual costs, whichever is greater, per request for  
15 a written payoff calculation on a high-cost home loan by a borrower in a  
16 calendar year;

17 (s) A lender shall not initiate a foreclosure or other judicial process to terminate a  
18 borrower's interest in residential real property subject to a high-cost home loan  
19 without first providing the borrower, at least thirty (30) days prior to the  
20 initiation of any process, written notice of default and of the borrower's right  
21 to cure. The notice shall include a statement of the amount needed to be paid  
22 by the borrower in order to cure the default and the date by which the payment  
23 is due to cure the default. If the amount needed to be paid will change during  
24 the thirty (30) day notice period, the notice shall provide information  
25 sufficient to enable a calculation of the daily change;

26 (t) A lender shall not recommend or encourage default on an existing loan or  
27 other debt in connection with the closing of a high-cost home loan that

1           refinances all or a portion of the existing loan or debt;

2           (u) A lender shall not make a high-cost home loan that does not require an escrow  
3           account for taxes and insurance;

4           (v) A lender shall not process the application to make a high-cost home loan if the  
5           proceeds shall be used, in whole or in part, to repay the principal of an  
6           existing loan secured by the borrower's principal dwelling that is not a high-  
7           cost home loan, without first requiring the borrower to obtain housing  
8           counseling by a HUD-approved counselor;

9           (w) A lender shall not make a high-cost home loan that allows the borrower, for  
10          any part or all of the term of the loan, to make payments that are applied only  
11          to interest and not to principal;

12          (x) A lender shall provide timely notice to the borrower of any material change in  
13          the terms of a high-cost home loan if the change is made after an application  
14          has been taken but before the closing of the loan. Notice shall be deemed  
15          timely if given not later than three (3) days after the lender has learned of the  
16          change or twenty-four (24) hours before the high-cost home loan is closed,  
17          whichever is earlier. If the lender discloses a material change more than three  
18          (3) days after learning of the change but still twenty-four (24) hours before the  
19          high-cost home loan is closed, it will not be liable for penalties or forfeitures  
20          if the lender cures in time for the borrower to avoid any damage;

21          (y) A lender shall not make a high-cost home loan without verifying the  
22          borrower's income and financial resources through tax returns, payroll  
23          receipts, bank records, or other similarly reliable documents, whether  
24          provided directly by the borrower or through a third party with the borrower's  
25          permission; and

26          (z) A lender shall not make a high-cost home loan without verifying the  
27          borrower's reasonable ability to pay all scheduled payments of principal,

1 interest, real estate taxes, homeowner's insurance, and mortgage insurance  
 2 premiums, as applicable. For loans in which the interest rate may vary, the  
 3 reasonable ability to repay shall be determined based upon the following:

4 1. In the case of a high-cost home loan in which the rate of interest varies  
 5 solely in accordance with an index, the interest rate determined by  
 6 adding the index rate in effect on the date of consummation of the  
 7 transaction to the maximum margin permitted at any time during the  
 8 loan agreement; or

9 2. In the case of a high-cost home loan in which the rate may vary at any  
 10 time during the term of the loan for any reason other than in accordance  
 11 with an index, the interest charged on the loan at the maximum rate that  
 12 may be charged during the term of the loan.

13 (3) Except as provided in paragraph (e) of subsection (2) of this section, the making of  
 14 a high-cost home loan which violates any provisions of subsection (2) of this  
 15 section is usurious, subject to the penalties of this chapter, and unlawful as an unfair  
 16 and deceptive act or practice in or affecting commerce in violation of the provisions  
 17 of KRS 367.170. The provisions of this section shall apply to any person who in  
 18 bad faith attempts to avoid the application of this section by:

19 (a) The structuring of a loan transaction as an open-end credit plan for the  
 20 purpose and with the intent of evading the provisions of this section when the  
 21 loan would have been a high-cost home loan if the loan had been structured as  
 22 a closed-end loan; or

23 (b) Dividing any loan transaction into separate parts for the purpose and with the  
 24 intent of evading the provisions of this section; or

25 (c) Any other such subterfuge.

26 The Attorney General, the commissioner~~executive—director~~ of the  
 27 Department~~Office~~ of Financial Institutions, or any party to a high-cost home loan

1 may enforce the provisions of this section. Any person seeking damages or penalties  
2 under the provisions of this section may recover damages under either this chapter  
3 or KRS Chapter 367, but not both.

4 (4) A lender of a high-cost home loan who, when acting in good faith, fails to comply  
5 with subsection (2) of this section, will not be deemed to have violated this section  
6 if the lender establishes that either:

7 (a) Within thirty (30) days of the loan closing the borrower is notified of the  
8 compliance failure, appropriate restitution is made, and whatever adjustments  
9 are necessary are made, at the choice of the borrower, to the loan to either:

10 1. Make the high-cost home loan satisfy the requirements of subsection (2)  
11 of this section; or

12 2. Change the terms of the loan in a manner beneficial to the borrower so  
13 that the loan will no longer be considered a high-cost home loan subject  
14 to the provisions of this section; or

15 (b) The compliance failure was not intentional and resulted from a bona fide error  
16 notwithstanding the maintenance of procedures reasonably adopted to avoid  
17 such errors, and within sixty (60) days after the discovery of the compliance  
18 failure, the borrower is notified of the compliance failure, appropriate  
19 restitution is made, and whatever adjustments are necessary are made to the  
20 loan to either, at the choice of the borrower, make the high-cost home loan  
21 satisfy the requirements of subsection (2) of this section or change the terms  
22 of the loan in a manner beneficial to the borrower so that the loan will no  
23 longer be considered a high-cost home loan subject to the provisions of this  
24 section. Examples of a bona fide error include clerical, calculation, computer  
25 malfunction and programming, and printing errors.

26 (c) For purposes of this subsection, "appropriate restitution" means the  
27 reimbursement by the lender of any points, fees, interest, or other charges

1           made by the lender and received from the borrower necessary to put the  
 2           borrower in the same position as he or she would have been had the loan, as  
 3           adjusted in accordance with paragraphs (a) and (b) of this subsection, been  
 4           originally made in accordance therewith.

- 5   (5) For purposes of this section, any extension of credit shall be deemed to have been  
 6       made in the Commonwealth of Kentucky, and therefore subject to the provisions of  
 7       this section, if the lender offers or agrees in Kentucky to lend money to a borrower,  
 8       who is a resident of Kentucky, on real property located within the Commonwealth  
 9       of Kentucky, or if such borrower accepts or makes the offer in Kentucky to borrow,  
 10      regardless of the situs of the contract as specified therein. Any oral or written  
 11      solicitation or communication to lend originating outside of Kentucky, but  
 12      forwarded to and received in Kentucky by a borrower who is a resident of  
 13      Kentucky, shall be deemed to be an offer or agreement to lend in Kentucky and,  
 14      therefore, subject to this section. Any oral or written solicitation or communication  
 15      to borrow originating within Kentucky, from a borrower who is a resident of  
 16      Kentucky, but forwarded to and received by a lender outside of Kentucky, shall be  
 17      deemed to be an acceptance or offer to borrow in Kentucky. Any oral or written  
 18      offer, acceptance, solicitation, or communication to lend or borrow, made in  
 19      Kentucky to, or received in Kentucky from, a borrower who is not a resident of  
 20      Kentucky, shall be subject to the provisions of this section, applicable federal law,  
 21      law of the situs of the contract, or law of the residence of the borrower, as the  
 22      parties may elect. The provisions of this section shall be severable and if any phrase,  
 23      clause, sentence, or provision is declared to be invalid, the validity of the remainder  
 24      of this section shall not be affected thereby.

25   ➔Section 1917. KRS 367.160 is amended to read as follows:

- 26   (1) All departments, agencies, officers, and employees of the Commonwealth shall  
 27       fully cooperate with the Attorney General in carrying out the functions of KRS



1 367.120 to 367.300.

2 (2) The persons designated by the Attorney General as utility consumer intervenors  
3 shall have the same access to material evidence and information of the Public  
4 Service Commission relating to any case before it as other parties to the case.

5 (3) The persons designated by the Attorney General as health insurance consumer  
6 intervenors shall have the same access to material evidence and information of the  
7 commissioner~~[executive director]~~ of the Department~~[Office]~~ of Insurance relating  
8 to any health insurance rate hearings before it as other parties to the hearing.

9 ➔Section 1918. KRS 367.934 is amended to read as follows:

10 (1) All payments of money made to any person, partnership, association, or corporation  
11 upon any agreement or contract, or any series or combination of agreements or  
12 contracts, but not including the furnishing of cemetery lots or mausoleums, which  
13 has for a purpose the furnishing or performance of funeral services, or the  
14 furnishing or delivery of personal property, merchandise, or services of any nature  
15 in connection with the final disposition of a dead human body, for future use at a  
16 time determinable by the death of the person whose body is to be disposed of, are  
17 held to be trust funds. The person, partnership, association, or corporation receiving  
18 the payments is declared to be the agent thereof, and shall deposit all payments in a  
19 trust account with a bank or trust company or invest said payments in a savings and  
20 loan association or federally chartered credit union. The trustee shall be the  
21 financial institution holding said funds. All of the interest, dividends, increases, or  
22 accretions of whatever nature earned by the funds deposited in a trust account shall  
23 remain with the principal of such account and become a part thereof, subject to all  
24 of the regulations concerning the principal of said fund herein contained. The agent  
25 shall have the authority at any time to transfer or redesignate the trustee of said  
26 funds in his or her discretion upon notification to the Attorney General. In case of  
27 any transfer, the former trustee shall transfer funds directly to and payable to the

1 newly designated trustee or its representative.

2 (2) All payments made to the agent under the agreement, contract, or plan are and shall  
3 remain trust funds with the financial institution until the death of the person for  
4 whose service the funds were paid and until the delivery of all merchandise and full  
5 performance of all services called for by the agreement, contract, or plan, except  
6 where payment is made pursuant to a request for refund.

7 (3) The funds shall not be paid by the financial institution until a certified statement is  
8 furnished to the financial institution by the agent setting forth that all of the terms  
9 and conditions of the agreement have been fully performed by the person,  
10 association, partnership, firm, or corporation. Any balance remaining in the fund  
11 after payment for the merchandise and services as set forth in the agreement,  
12 contract, or plan shall be paid to the estate of the beneficiary of the agreement,  
13 contract, or plan.

14 (4) The funds shall not be paid by the financial institution until the agent has proven the  
15 death of the person for whose service the funds were paid by furnishing the  
16 financial institution with a verified or certified copy of a record verifying the death,  
17 issued by the state registrar of the Vital Statistics Branch or its successor agency as  
18 authorized by KRS Chapter 213, or a provisional certificate of death as described in  
19 KRS 213.076.

20 (5) No provision of KRS 367.932 to 367.974 shall be construed to apply to contracts  
21 for funeral service or merchandise sold as preneed and burial insurance policies  
22 which are regulated by the Department~~Office~~ of Insurance of this state.

23 ➔Section 1919. KRS 386.510 is amended to read as follows:

24 As used in KRS 386.510 to 386.590, the following terms shall be construed to have the  
25 meaning set forth by this section, unless a contrary meaning clearly appears from the  
26 context:

27 (1) The term "trust institution" means any of the following corporations having trust

1 powers and authorized to act in a fiduciary capacity under the laws of Kentucky:  
 2 Any state bank or trust company incorporated under the laws of Kentucky and any  
 3 national banking association incorporated under the laws of the United States and  
 4 having its principal office in Kentucky.

5 (2) The term "investment adviser" of a fiduciary investment company means (a) any  
 6 trust institution which, pursuant to contract with a fiduciary investment company  
 7 possessing the qualifications provided by KRS 386.510 to 386.590, regularly  
 8 furnishes advice to such investment company with respect to the desirability of  
 9 investing in, purchasing or selling securities or other property or is empowered to  
 10 determine what securities or other property shall be purchased or sold by such  
 11 investment company, and (b) any person other than a trust institution, who, pursuant  
 12 to contract with such trust institution, regularly performs substantially all of the  
 13 duties undertaken by such trust institution.

14 (3) The term "fiduciary investment company" means a corporation which is an  
 15 investment company as defined by the Act of Congress entitled "Investment  
 16 Company Act of 1940" approved August 22, 1940, as amended, and is incorporated  
 17 in accordance with the "Kentucky Business Corporation Act" as to constitute a  
 18 medium for the investment of funds held by trust institutions and foreign trust  
 19 institutions in a fiduciary capacity, either alone or with one (1) or more  
 20 cofiduciaries.

21 (4) The term "supervisory agency" means (a) the comptroller of the currency of the  
 22 United States with respect to any fiduciary investment company having a national  
 23 banking association as an investment adviser, and (b) the commissioner~~executive~~  
 24 ~~director~~ of financial institutions of the Commonwealth of Kentucky with respect to  
 25 any fiduciary investment company having a state bank as an investment adviser.  
 26 The term shall mean the commissioner~~executive director~~ of financial institutions  
 27 of the Commonwealth of Kentucky with respect to any fiduciary investment

1 company which does not have an investment adviser.

2 (5) The term "foreign trust institution" means any state bank or trust company  
3 organized under the laws of any state other than Kentucky or any national banking  
4 association incorporated under the laws of the United States and having its principal  
5 office in some state other than Kentucky, which has trust powers and is authorized  
6 to act in a fiduciary capacity under the laws under which it was incorporated.

7 ➔Section 1920. KRS 386.570 is amended to read as follows:

8 The commissioner~~[executive-director]~~ of financial institutions shall have authority to  
9 adopt and issue reasonable and uniform rules and regulations to govern the conduct and  
10 management of all fiduciary investment companies having investment advisers other than  
11 national banks. The commissioner~~[executive-director]~~ of financial institutions may,  
12 whenever he may deem it necessary or expedient, examine every fiduciary investment  
13 company contemplated by KRS 386.510 to 386.590 having an investment adviser which  
14 is not a national bank. In every such examination, the commissioner~~[executive-director]~~  
15 of financial institutions shall make inquiry as to its financial condition, the policies of its  
16 management, whether it is complying with the laws of Kentucky, and such other matters  
17 as the commissioner~~[executive-director]~~ of financial institutions may reasonably  
18 prescribe. In the enforcement of KRS 386.510 to 386.590 and the restrictions and  
19 limitations imposed by their articles of incorporation and bylaws, the  
20 commissioner~~[executive-director]~~ of financial institutions shall have the same powers and  
21 authority with respect to fiduciary investment companies having investment advisers  
22 other than a national bank as are conferred upon him by the laws of this state with respect  
23 to state banks and trust companies to the same extent and in the same manner as if  
24 fiduciary investment companies were expressly named in Subtitle 3 of Chapter 286 of the  
25 Kentucky Revised Statutes.

26 ➔Section 1921. KRS 393.082 is amended to read as follows:

27 (1) Unclaimed sums delivered to the Kentucky State Treasurer pursuant to KRS

393.080(3) shall be placed in a special expendable trust fund established by the Kentucky Workers' Compensation Funding Commission. The Kentucky Workers' Compensation Funding Commission shall establish a separate trust account with respect to each final determination or order providing for a refund that the Attorney General determines to have a reasonable relationship to the workers' compensation liability of a bankrupt employer.

(2) The commissioner~~executive director~~ of the Department~~Office~~ of Workers' Claims shall be the administrator of the resulting trust fund established pursuant to this section. The commissioner~~executive director~~ or his or her designee shall be authorized to determine the value of all workers' compensation claims against the bankrupt employer and to prepare a comprehensive distribution plan. Eligible claimants may elect to participate in a comprehensive distribution plan in exchange for the release of all related claims against the Commonwealth and all of its cabinets, departments, offices, bureaus, agencies, officers, agents, and employees, with the exception of the special fund in the ~~Department of~~ Labor Cabinet. A claimant shall agree as part of a release under this section not to file any future motions to reopen the named workers' compensation claim or claims, and not to file new claims with respect to the same injury or occupational disease.

(3) A comprehensive distribution plan for unclaimed utility refunds placed in a trust account pursuant to this section shall consist of the full payment of workers' compensation income benefits for eligible claimants until the fund is exhausted, subject to the exceptions noted in KRS 393.080 and this section, and may include lump-sum settlements in addition to biweekly payment plans. An initial distribution shall be made to eligible claimants after the commissioner~~executive director~~ of the Department~~Office~~ of Workers' Claims, or the commissioner's~~executive director's~~ designee, has made an initial determination of the number of eligible claimants, the amount of income benefits due, and the amount to be retained as a

- 1 reserve for pending claims. The initial distribution shall include payment of all past  
2 due income benefits, without interest, for eligible claimants.
- 3 (4) Neither the special fund nor the uninsured employers' fund shall be considered to be  
4 claimants for the purposes of this section. Medical and related benefits shall not be  
5 considered in the valuation of the claims unless the amount available in the trust  
6 fund clearly exceeds the estimated value of income benefits for all claims. If a  
7 workers' compensation surety bond, letter of credit, or other form of security for the  
8 payment of the workers' compensation liabilities of a bankrupt employer has been  
9 collected by the commissioner~~[executive director]~~ of the Department~~[Office]~~ of  
10 Workers' Claims or the Workers' Compensation Board for distribution to claimants  
11 in a manner to be determined by court order, it may be assumed in the valuation of  
12 the claims in a comprehensive distribution plan that the security will be distributed  
13 by the court on a pro rata basis and an appropriate deduction may be taken.
- 14 (5) In preparing the valuation of claims for inclusion in a comprehensive distribution  
15 plan, the commissioner~~[executive director]~~ or the commissioner's~~[executive~~  
16 ~~director's]~~ designee shall deduct special fund payments. Settlement of a workers'  
17 compensation claim as part of a comprehensive distribution plan under this section  
18 shall not accelerate the date on which the special fund's liability becomes due.
- 19 (6) If the bankrupt employer ceased business operations at least three (3) years prior to  
20 establishment of a trust account pursuant to this section, only claimants who file  
21 workers' compensation claims within sixty (60) days of the establishment of the  
22 trust account or before shall be eligible to receive payments from the trust fund.
- 23 (7) All claimants shall cooperate with information requests from the  
24 Department~~[Office]~~ of Workers' Claims concerning prior payments of workers'  
25 compensation benefits. The commissioner~~[executive director]~~ of the  
26 Department~~[Office]~~ of Workers' Claims or his or her designee may subpoena  
27 witnesses, including present or past managers and officers of the bankrupt

1 employer, and may conduct evidentiary hearings under oath relating to the past and  
 2 present workers' compensation liabilities of the bankrupt employer or information  
 3 relevant to unpaid workers' compensation benefits. Administrative subpoenas issued  
 4 under the authority of the commissioner~~[executive—director]~~ of the  
 5 Department~~[Office]~~ of Workers' Claims for this purpose may be enforced in the  
 6 Franklin Circuit Court.

7 (8) The Attorney General shall provide representation of the comprehensive  
 8 distribution plan as a named defendant in the event the establishment of the trust  
 9 fund is challenged.

10 (9) The provisions of KRS 393.080(3) or this section shall not be construed to  
 11 constitute an admission of the validity of any workers' compensation claims, nor  
 12 shall these provisions be interpreted in a manner that would transfer or create  
 13 liability on behalf of the commissioner~~[executive—director]~~ of the  
 14 Department~~[Office]~~ of Workers' Claims, any agency, or employee, beyond that  
 15 expressly set forth in a comprehensive distribution plan.

16 (10) The special fund shall issue trust fund checks in the amounts and to the claimants or  
 17 claimants' representatives as directed by the commissioner~~[executive—director]~~ of  
 18 the Department~~[Office]~~ of Workers' Claims.

19 (11) The personnel and other costs of administering a trust fund established pursuant to  
 20 this section shall be paid out of the investment income of the trust fund.

21 (12) Attorney fees shall be subject to the limitations and maximum amounts for the  
 22 payment of attorney's fees established by KRS 342.320, as well as the approval of  
 23 the commissioner~~[executive—director]~~ or his or her designee.

24 (13) If a workers' compensation claimant elects not to participate in a comprehensive  
 25 distribution plan proposed by the commissioner~~[executive—director]~~ of the  
 26 Department~~[Office]~~ of Workers' Claims or the commissioner's~~[executive~~  
 27 ~~director's]~~ designee, that claimant shall not be entitled to any portion of the utility

1 refund for the payment of the workers' compensation benefits. A claimant shall have  
 2 sixty (60) days following issuance of a comprehensive distribution plan in which to  
 3 make an election to participate or not.

4 ➔Section 1922. KRS 393.280 is amended to read as follows:

5 (1) The department, through its employees or authorized representatives, may at  
 6 reasonable times and upon reasonable notice examine all relevant records of any  
 7 person except any banking organization or financial organization where there is  
 8 reason to believe that there has been or is a failure to report property that should be  
 9 reported under this chapter during the preceding reporting period. Records shall be  
 10 considered relevant to the examination of the preceding reporting period if they  
 11 document the period necessary, for that type of property, to establish presumed  
 12 abandonment. The department may avail itself of enforcement technologies and  
 13 programs designed to increase compliance among businesses with Kentucky's  
 14 unclaimed property law.

15 (2) The Department~~[Office]~~ of Financial Institutions may at reasonable times and upon  
 16 reasonable notice examine all relevant records of any banking organization or  
 17 financial organization if there is reason to believe that there has been or is a failure  
 18 to report property that should be reported under this chapter during the preceding  
 19 reporting period.

20 (3) Documents and working papers obtained or compiled by the department or the  
 21 Department~~[Office]~~ of Financial Institutions in the course of conducting an  
 22 examination are confidential and are not open records under KRS 61.870 to 61.884.

23 (4) The State Treasurer may promulgate administrative regulations pursuant to KRS  
 24 Chapter 13A and any reasonable and necessary rules for the enforcement of this  
 25 chapter, and govern hearings held before him. He may delegate in writing to any  
 26 employee of the department authority to perform any of the duties imposed on him  
 27 by this chapter, except the promulgation of rules.



➔Section 1923. KRS 393.300 is amended to read as follows:

No person shall institute proceedings to escheat real property the title to which was acquired by any lending corporation in satisfaction of debts previously contracted in the course of its business, or that it purchases under a judgment for any such debt in its favor, if such lending corporation is under the supervision of the Department~~[Office]~~ of Financial Institutions of this state, comptroller of currency of the United States or any other duly constituted supervising banking authority, state or Federal, without first obtaining the consent of the supervising authority having supervision over that corporation.

➔Section 1924. KRS 411.493 is amended to read as follows:

(1) Notwithstanding any other provision of law, except as provided in subsection (2) of this section, a person is not liable for removal costs or damages which result from actions taken, or not taken, in the course of rendering care, assistance, or advice consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or by the secretary of the Energy and Environment~~[Environmental and Public Protection]~~ Cabinet, or his designee.

(2) Subsection (1) of this section does not apply:

(a) To a responsible party;

(b) To any person who is grossly negligent or who engages in willful misconduct;

or

(c) With respect to personal injury or wrongful death.

(3) A responsible party is liable for any removal costs and damages that another person is relieved of under subsection (1) of this section.

(4) Nothing in this section affects the liability of a responsible party for oil spill response under Kentucky law.

➔Section 1925. KRS 438.310 is amended to read as follows:

(1) No person shall sell or cause to be sold any tobacco product at retail to any person

1 under the age of eighteen (18), or solicit any person under the age of eighteen (18)  
2 to purchase any tobacco product at retail.

3 (2) Any person who sells tobacco products at retail shall cause to be posted in a  
4 conspicuous place in his establishment a notice stating that it is illegal to sell  
5 tobacco products to persons under age eighteen (18).

6 (3) Any person selling tobacco products shall require proof of age from a prospective  
7 buyer or recipient if the person has reason to believe that the prospective buyer or  
8 recipient is under the age of eighteen (18).

9 (4) A person who violates subsection (1) or (2) of this section shall be subject to a fine  
10 of not less than one hundred dollars (\$100) nor more than five hundred dollars  
11 (\$500) for a first violation and a fine of not less than five hundred dollars (\$500) nor  
12 more than one thousand dollars (\$1,000) for any subsequent violation. The fine  
13 shall be administered by the Department~~[Office]~~ of Alcoholic Beverage Control  
14 using a civil enforcement procedure.

15 ➔Section 1926. KRS 438.311 is amended to read as follows:

16 (1) Except for the provisions of KRS 438.330, it shall be unlawful for a person who has  
17 not attained the age of eighteen (18) years to purchase or accept receipt of or to  
18 attempt to purchase or accept receipt of a tobacco product, or to present or offer to  
19 any person any purported proof of age which is false, fraudulent, or not actually his  
20 or her own, for the purpose of purchasing or receiving any tobacco product. It shall  
21 not be unlawful for such a person to accept receipt of a tobacco product from a  
22 family member, except if the child has been committed to the custody of the state  
23 under KRS Chapters 600 to 645, or from an employer when required in the  
24 performance of the person's duties.

25 (2) Violation of this section shall be punishable by a fine of fifty dollars (\$50) and  
26 twenty (20) hours of community service work for a first offense within a one (1)  
27 year period, and a fine of two hundred dollars (\$200) and forty (40) hours of

1 community service work for a second or subsequent offense within a one (1) year  
2 period.

3 (3) This offense shall be deemed a status offense and shall be under the jurisdiction of  
4 the juvenile session of the District Court.

5 (4) All peace officers with general law enforcement authority and employees of the  
6 Department~~Office~~ of Alcoholic Beverage Control may issue a uniform citation,  
7 but not make an arrest or take a child into custody, for a violation of this section. If  
8 a child fails to appear in court in response to a uniform citation issued pursuant to  
9 the section, the court may compel the attendance of the defendant in the manner  
10 specified by law.

11 ➔Section 1927. KRS 438.313 is amended to read as follows:

12 (1) No wholesaler, retailer, or manufacturer of cigarettes or tobacco products may  
13 distribute cigarettes or tobacco products, including samples thereof, free of charge  
14 or otherwise, to any person under the age of eighteen (18).

15 (2) Any person who distributes cigarettes or tobacco products, including samples  
16 thereof, free of charge or otherwise shall require proof of age from a prospective  
17 buyer or recipient if the person has reason to believe that the prospective purchaser  
18 or recipient is under the age of eighteen (18).

19 (3) Any person who violates the provisions of this section shall be fined not less than  
20 one thousand dollars (\$1,000) nor more than two thousand five hundred dollars  
21 (\$2,500) for each offense. The fine shall be administered by the Department~~Office~~  
22 of Alcoholic Beverage Control using a civil enforcement procedure for persons  
23 eighteen (18) years of age or older. For persons under the age of eighteen (18) years,  
24 the offense shall be deemed a status offense and shall be under the jurisdiction of  
25 the juvenile session of the District Court.

26 (4) All peace officers with general law enforcement authority and employees of the  
27 Department~~Office~~ of Alcoholic Beverage Control may issue a uniform citation,

1 but may not make an arrest, or take a child into custody, for a violation of this  
 2 section. If a child fails to appear in court in response to a uniform citation issued  
 3 pursuant to this section, the court may compel the attendance of the defendant in the  
 4 manner specified by law.

5 ➔Section 1928. KRS 438.315 is amended to read as follows:

6 (1) The sale of tobacco products dispensed through a vending machine is prohibited to  
 7 any person under the age of eighteen (18) years.

8 (2) The purchase of tobacco products dispensed through a vending machine is  
 9 prohibited to any person under the age of eighteen (18) years.

10 (3) Except for vending machines located in factories or vending machines located in  
 11 bars or taverns to which minors are not permitted access, beginning one (1) year  
 12 after July 15, 1994, any vending machine from which tobacco products are  
 13 dispensed shall be located in the line of sight of the cashier for the retail  
 14 establishment.

15 (4) Any owner of a retail establishment violating this section shall be subject to a fine  
 16 of not less than one hundred dollars (\$100) nor more than five hundred dollars  
 17 (\$500) for each violation. The fine shall be administered by the Department~~{Office}~~  
 18 of Alcoholic Beverage Control using a civil enforcement procedure for persons  
 19 eighteen (18) years of age or older. For persons under the age of eighteen (18) years,  
 20 the offense shall be deemed a status offense and shall be under the jurisdiction of  
 21 the juvenile session of the District Court.

22 (5) All peace officers with general law enforcement authority and employees of the  
 23 Department~~{Office}~~ of Alcoholic Beverage Control may issue a uniform citation,  
 24 but may not make an arrest, or take a child into custody, for a violation of this  
 25 section. If a child fails to appear in court in response to a uniform citation issued  
 26 pursuant to this section, the court may compel the attendance of the defendant in the  
 27 manner specified by law.

➔Section 1929. KRS 438.317 is amended to read as follows:

(1) No person shall sell or cause to be sold at retail cigarettes packaged in units of fewer than twenty (20) cigarettes.

(2) No resident wholesaler, nonresident wholesaler, or subjobber shall make available to a retail establishment cigarettes packaged for retail sale in units of less than twenty (20) cigarettes.

(3) Any person violating subsection (1) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

Any person violating subsection (2) of this section shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500). These penalties shall be enforced by the Department~~[Office]~~ of Alcoholic Beverage Control through civil enforcement procedures.

➔Section 1930. KRS 438.320 is amended to read as follows:

Each resident wholesaler, nonresident wholesaler, or subjobber making tobacco products available to a retail establishment for sale or distribution shall report the name and address of the owner of the retail establishment to the Department~~[Office]~~ of Alcoholic Beverage Control in a manner specified by administrative regulations promulgated pursuant to KRS Chapter 13A.

➔Section 1931. KRS 438.325 is amended to read as follows:

(1) Each owner of a retail establishment selling or distributing tobacco products shall notify each individual employed in the retail establishment as a retail sales clerk that the sale of tobacco products to any person under the age of eighteen (18) years and the purchase of tobacco products by any person under the age of eighteen (18) years are prohibited.

(2) Each owner of a retail establishment selling or distributing tobacco products shall notify each individual employed in the retail establishment as a retail sales clerk that proof of age is required from a prospective buyer or recipient if the person has

1 reason to believe that the prospective purchaser or recipient is under the age of  
2 eighteen (18).

- 3 (3) The notice to employees that is required in subsection (1) of this section shall be  
4 provided before the person commences work as a retail sales clerk, or, in the case of  
5 a person employed as a retail sales clerk on July 15, 1994, within thirty (30) days of  
6 that date. The employee shall signify receipt of the notice required by this section by  
7 signing a form that states as follows:

8 "I understand that under the law of the Commonwealth of Kentucky it is illegal to  
9 sell or distribute tobacco products to persons under the age of eighteen (18) years  
10 and that it is illegal for persons under the age of eighteen (18) years to purchase  
11 tobacco products."

- 12 (4) The owner of the retail establishment shall maintain the signed notice that is  
13 required pursuant to subsection (3) of this section in a place and in a manner so as  
14 to be easily accessible to any employee of the Department~~{Office}~~ of Alcoholic  
15 Beverage Control or the Department of Agriculture conducting an inspection of the  
16 retail establishment for the purpose of monitoring compliance in limiting the sale or  
17 distribution of tobacco products to persons under the age of eighteen (18) as  
18 provided in KRS 438.305 to 438.340.

- 19 (5) Any owner of the retail establishment violating subsections (1) to (4) of this section  
20 shall be subject to a fine of not less than one hundred dollars (\$100) nor more than  
21 five hundred dollars (\$500) for each violation. The fine shall be administered by the  
22 Department~~{Office}~~ of Alcoholic Beverage Control in a civil enforcement  
23 procedure.

24 ➔Section 1932. KRS 438.330 is amended to read as follows:

- 25 (1) The Department~~{Office}~~ of Alcoholic Beverage Control and the Department of  
26 Agriculture shall carry out annually-conducted random, unannounced inspections of  
27 retail establishments where tobacco products are sold or distributed for the purpose

1 of enforcing the provisions of KRS 438.305 to 438.340. The inspections shall be  
 2 conducted to the extent necessary to assure that the Commonwealth remains in  
 3 compliance with Public Law 102-321 and applicable federal regulations. The  
 4 Department of Alcoholic Beverage Control~~[office]~~ and the Department of  
 5 Agriculture~~[department]~~ shall also ensure that targeted inspections are conducted at  
 6 those retail establishments where, and at those times when, persons under the age of  
 7 eighteen (18) years are most likely to purchase tobacco products. Persons under the  
 8 age of eighteen (18) years may be used to test compliance with the provisions of  
 9 KRS 438.305 to 438.340 only if the testing is conducted under the direct  
 10 supervision of the Department~~[Office]~~ of Alcoholic Beverage Control, sheriff, or  
 11 chief of police, or their employees, and written parental consent has been obtained.  
 12 The Department~~[Office]~~ of Alcoholic Beverage Control shall prepare annually, for  
 13 submission by the Governor to the Secretary of the United States Department of  
 14 Health and Human Services, the report required by Section 1926 of Subpart 1 of  
 15 Part B of Title XIX of the Federal Public Health Service Act.

- 16 (2) The Department~~[Office]~~ of Alcoholic Beverage Control shall develop and  
 17 implement the survey sampling methodologies to carry out the inspections as  
 18 described in this section.

19 ➔Section 1933. KRS 438.337 is amended to read as follows:

- 20 (1) Except for violations of the provisions of KRS 438.311, 438.313, and 438.315 by a  
 21 juvenile, which shall be under the jurisdiction of the juvenile session of the District  
 22 Court, the Department~~[Office]~~ of Alcoholic Beverage Control shall carry out the  
 23 enforcement provisions of KRS 438.305 to 438.340.
- 24 (2) The Department~~[Office]~~ of Alcoholic Beverage Control shall be entitled to the  
 25 revenue produced by one-twentieth of one cent (\$0.0005) of the three-cent (\$0.03)  
 26 per pack revenue collected by the Finance and Administration Cabinet from the  
 27 state excise tax on the sale of cigarettes as imposed by KRS 138.140 to be deposited

1 in a trust and agency account created in the State Treasury, and to keep fifty percent  
 2 (50%) of any fines collected under KRS 438.305 to 438.340 to offset the costs of  
 3 enforcement of KRS 438.305 to 438.340.

4 (3) The Department~~{Office}~~ of Alcoholic Beverage Control shall be responsible for  
 5 maintaining statistics for compilation of required reports to be submitted to the  
 6 United States Department of Health and Human Services.

7 (4) The Department~~{Office}~~ of Alcoholic Beverage Control shall devise a plan and  
 8 time frame for enforcement to determine by random inspection if the percentage of  
 9 retailers or distributors making illegal sales to minors does or does not exceed  
 10 federal guidelines preventing tobacco sales to minors.

11 ➔Section 1934. KRS 438.340 is amended to read as follows:

12 The Department~~{Office}~~ of Alcoholic Beverage Control and the Department of  
 13 Agriculture are authorized to promulgate administrative regulations pursuant to KRS  
 14 Chapter 13A as necessary to implement and carry out the provisions of KRS 438.305 to  
 15 438.340.

16 ➔Section 1935. KRS 528.110 is amended to read as follows:

17 (1) Any person who, either for himself or as agent or employee of another, wagers  
 18 money or anything of value on a horse race run or about to be run or advertised,  
 19 posted or reported as being run at any race track in or out of this state, or who  
 20 engages in the occupation of receiving, making, transmitting or negotiating, either  
 21 in person or by messenger, telephone or telegraph, wagers on horse races run or  
 22 about to be run or advertised, posted or reported as being run or about to be run at  
 23 any race track in or out of the state, shall, except in the case of wagers made within  
 24 the enclosure of a race track licensed by the Kentucky Horse Racing  
 25 Commission~~{Authority}~~ during an authorized race meeting at that track, or an  
 26 enclosure during regular meetings in which running, trotting or pacing races are  
 27 being conducted by associations regularly organized for that purpose, be guilty of a



1 Class A misdemeanor.

2 (2) In any prosecution under subsection (1) of this section, the state need not prove that  
3 the horse race upon which the wager was placed was actually run. Proof that the  
4 wager was made upon what purported to be or what was advertised, reported or  
5 understood to be a horse race shall be sufficient to establish a prima facie case for  
6 the state.

7 ➔Section 1936. The following KRS sections are repealed:

8 56.790 Energy Policy Advisory Council -- Membership -- Meetings.

9 152.725 Reports of findings and legislative recommendations.

10 216A.045 Board placed in Division of Occupations and Professions.

11 224.10-025 Office of Inspector General -- Executive Director -- Responsibilities --  
12 Secretary's power to organize office.

13 224.10-103 Powers and duties of Environmental and Public Protection Cabinet.

14 342.495 Kentucky Employee's Insurance Association created -- Attached to Department  
15 of Labor for administrative purposes.

16 342.500 Board of directors -- Selection -- Term.

17 342.505 Board officers elected annually.

18 342.510 Quorum of board -- Vacancies.

19 342.515 Representation of subscribers.

20 342.520 Subscriptions required to issue first policy.

21 342.525 Procedure required before first policy issued.

22 342.530 Board to group subscribers -- Amount of premiums.

23 342.535 Association to fix contingent liability -- Limit.

24 342.540 Assessments.

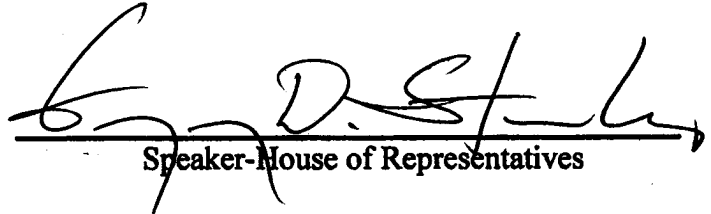
25 342.545 Dividends -- All funds available for contingent liability.

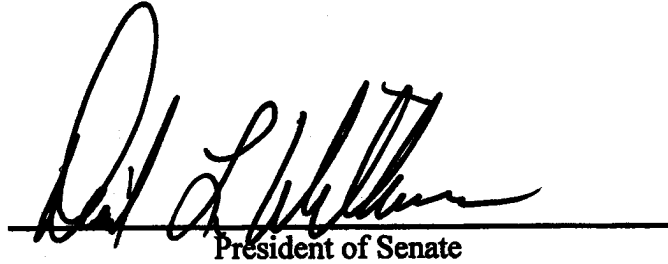
26 342.550 Executive director of insurance to approve premiums, etc.

27 342.555 Board to make safety regulations -- Inspections -- Review of regulation.


1       ➔Section 1937. Notwithstanding KRS 12.028, the General Assembly confirms  
2 Executive Order 2009-535, dated June 12, 2009, relating to the abolition of the  
3 Environmental and Public Protection Cabinet and the establishment of the Public  
4 Protection Cabinet; Executive Order 2009-537, dated June 12, 2009, relating to the  
5 establishment of the Labor Cabinet; Executive Order 2009-538, dated June 12, 2009,  
6 relating to the establishment of the Energy and Environment Cabinet; and Executive  
7 Order 2009-1086, dated November 6, 2009, relating to the reorganization of the Public  
8 Protection Cabinet, to the extent these executive orders are not otherwise confirmed or  
9 superseded by this Act.

10       ➔Section 1938. In order to reflect the reorganization effectuated by this Act, the  
11 reviser of statutes shall replace references in the Kentucky Revised Statutes to the  
12 agencies, subagencies, and officers affected by this Act with references to the appropriate  
13 successor agencies, subagencies, and officers established by this Act. The reviser of  
14 statutes shall base these actions on the functions assigned to the new entities in this Act  
15 and may consult with officers of the affected agencies, or their designees, to receive  
16 suggestions.

  
Speaker-House of Representatives

  
President of Senate

Attest:   
Chief Clerk of House of Representatives

Approved   
Governor

Date March 25, 2010